



March 24, 2022

John G. Rooney
Director
Rooney Foundation
883-4445 Calgary Trail
Edmonton, AB T6H 4J8

BN: 839039518 RR0001
File: 3045341

Dear John G. Rooney:

**Subject: Notice of intention to revoke
Rooney Foundation**

We are writing with respect to our letter dated November 4, 2020 (copy enclosed), in which Rooney Foundation (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, 2011 to December 31, 2017. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

In response to our letter, the Organization submitted correspondence dated January 29, 2021 (copy enclosed), acknowledging the non-compliance issues communicated. The Organization's responses to the stated non-compliance concerns included direct representations to the four areas of non-compliance presented as well as documentation provided in support of the valuation of shares acquired in the audit period in [REDACTED]

We have reviewed and considered your written responses, however our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is explained in Appendix A attached.

Conclusion

The audit conducted 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 meet its disbursement quota, failed to devote resources to charitable purposes, failed to maintain proper books and records, and issued a donation receipt not in accordance with the Act and/or its Regulations. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated November 4, 2020, and pursuant to subsection 168(1) and 149.1(2) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), 168(1)(e), and subsection 149.1(3) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

| Business number | Name |
|------------------------|--|
| 839039518 RR0001 | Rooney Foundation Edmonton, Alberta |

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

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

However, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of 30 days from the date this letter was mailed. As such, the Organization's registration will be revoked on the date of publication, unless the CRA receives an order, within the next 30 days, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, even though it may have filed a notice of objection.

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

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means

that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at canada.ca/charities-giving;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, we advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,



Tony Manconi
Director General
Charities Directorate

Enclosures:

- CRA letter dated November 4, 2020
- Organization representations dated January 29, 2021
- Appendix A
- Appendix B, Relevant provisions of the Act

c.c.: Don Richards, Director
Edmonton AB

November 4, 2020

John G. Rooney,
Director
ROONEY FOUNDATION
883-4445 Calgary Trail
Edmonton, AB T6H 4J8

BN: 839039518 RR0001
File: 3045341

Dear John G. Rooney:

Subject: Audit of Rooney Foundation

This letter results from the audit of Rooney Foundation (Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2011 to December 31, 2017.

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

| AREAS OF NON-COMPLIANCE | | |
|--|-----------|--|
| Issue | Reference | |
| 1. Failure to meet disbursement quota (devotion of resources to charitable purposes) | | 149.1(3), 168(1)(b) |
| 2. Failure to devote resources to a charitable purpose | | 149.1(1), 149.1(3), 168(1)(b) |
| 3. Failure to maintain adequate books and records | | 149.1(3), 230(2), 168(1)(b), 168(1)(e) |
| 4. Issuing receipts not in accordance with the Act and/or its Regulations | | 149.1(2), 168(1)(d), 188.1(7) or 188.1(9), Regulation 3500 and 3501(1) |

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

Canada

Background

Correspondence was initially issued to the Organization by CRA (dated September 17, 2018), confirming our selection of the Organization for audit of fiscal periods ending December 31, 2011 through December 31, 2016 (see enclosed). The correspondence outlined our concerns relating to the status of an identified ineligible individual (as defined in subsection 149.1(1) of the Act) listed as an active director / trustee or like official in the Organization's T3010 Information Returns. In response to the correspondence issued a response was submitted by the Organization (dated October 22, 2018) demonstrating acceptance of the ineligible individual's resignation as a director.

Further to the Organization's response, the CRA extended the audit period by letter to include fiscal period ending December 31, 2017. As a result, we requested additional information and documentation from the Organization in our letter of December 11, 2018 (see enclosed). The Organization provided a response to the request by letter dated January 23, 2019, a review of which we have now completed.

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

Identified areas of non-compliance

1. Failure to meet disbursement quota (devotion of resources to charitable purposes)

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof.¹

A registered charity may only use its resources (funds, personnel and/or property) in the two ways, both inside and outside of Canada: for charitable activities undertaken by the charity itself under its continued supervision, direction and control, and for gifting funds to "qualified donees" as defined in the Act.

Subsection 149.1(1) of the Act describes the disbursement quota, a minimum spending requirement of registered Canadian charitable organizations. The disbursement quota is calculated at a rate of 3.5% of a registered charity's property **not** used directly in charitable activities or administration. The disbursement quota is calculated based upon an average of the value of applicable property maintained during the 24 months before the beginning of the fiscal period and 24 months before the end of the fiscal period (i.e. amounts reported on Line 5900 and 5910 of the T3010 Information Return)².

¹ Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue, [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

² See Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation.html

Audit Findings:

Notwithstanding the lack of books and records to substantiate that any amounts were transferred to qualified donees (QD) during the audit period (see item # 3 below), the Organization reported distributions of funds to QD on two occasions during the audit period (i.e. 2011 through 2017) totalling \$ 18,870. The accumulated disbursement quota (DQ) obligation of the Organization during the same timeframe totalled \$ 56,821. The Organization's DQ shortfalls are summarized as follows:

| | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> |
|------------------|--------------|-------------|-------------|-------------|---------------|-------------|
| Line 5900 | 82,000 | 228,575 | 301,944 | 320,060 | 339,264 | 351,620 |
| DQ requirement | 2,870 | 8,000 | 10,568 | 11,202 | 11,874 | 12,307 |
| Gift to QD | <u>2,870</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>16,000</u> | <u>0</u> |
| Net DQ shortfall | 0 | 8,000 | 10,568 | 11,202 | (4,126) | 12,307 |

Total DQ shortfall: \$ 37,951 (\$ 8,000 + \$ 10,568 + \$ 11,202 - \$ 4,126 + \$ 12,307)

Under subsection 149.1(20), the maximum allowances for carry-forward and carry-back of disbursement quota excesses are defined (i.e. maximum carry-back of 1 fiscal year, maximum carry-forward of 5 years). As a result of the limitations imposed by subsection 149.1(20), the Organization is unable to address the net DQ shortfalls applicable to the 2013, 2014 and 2015 fiscal periods.

Summary:

The disbursement quota requirements for registered charities are designed to ensure that the benefit of the tax assistance provided to such organizations and to their donors is passed on to those in need of assistance, through the charitable activities of such organizations.

It is our view that the Organization failed to comply with the disbursement quota requirements outlined in subsection 149.1(1) of the Act in that the resources of the Organization have not been applied, expended or utilized in a manner shown to constitute a charitable use of its resources. Under subsection 149.1(3) of the Act, the Minister may revoke the registration of the Organization, because it has failed as described at paragraph 168(1)(b) of the Act to comply with the requirements of the Act for its registration as such.

2. Failure to devote resources to charitable purposes

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

- for its own charitable activities - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to “qualified donees” as defined in the Act.³

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 public 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(3)(b.1) of the Act provides that a public 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. In summary, a public foundation may carry on its own charitable activities, or it may make gifts to qualified donees.

Fiduciary Duty

By virtue of their unique role, and as a means of “encouraging activities which are of special benefit to the community”⁴, registered charities receive privileged treatment under the Act. In addition to the income tax exemption that is also granted to non-profit organizations, registered charities are further afforded the advantage of being able to issue official donation receipts whereby individual donors are eligible to receive tax credits for contributions they make to registered charities.

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

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

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

“...regardless of the province or territory in which they operate, directors of charities should not be passive. They have a fiduciary responsibility to ensure that a charity is being operated in the public interest. They have a duty of diligence that requires them to be knowledgeable about the workings of the charity and ensure that the charity and its assets are cared for properly.”⁵

³ A “qualified donee” means a donee described in subsection 149.1(1) of the Act, or in CRA’s Guidance document titled CG-010. Qualified donees, available on the CRA website.

⁴ Vancouver Society, *ibid.* note 2, para.170

⁵ See [Canada.ca/en/revenue-agency/services/forms-publications/publications/charitiesnews-21/archived-registered-charities-newsletter-no-21-winter-2005.html](http://www.cra-arc.gc.ca/en/revenue-agency/services/forms-publications/publications/charitiesnews-21/archived-registered-charities-newsletter-no-21-winter-2005.html)

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

“...a duty to act for someone else’s benefit exclusively. It is the highest standard of duty implied by law (e.g. trustee, guardian). For charities, this means to accept and hold a public trust to maintain, preserve and develop the organization’s resources to be used for charitable purposes, to ensure that the organization’s activities remain charitable, and to manage the organization for the benefit of the public.”⁶

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

Investment of Charitable Resources

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

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

The heightened duty of care of charities’ directors is outlined in the Canada Not-for-profit Corporations Act, subsection 149(1), which states:

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

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

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

- General economic conditions
- The possible effect of inflation or deflation
- The expected tax consequences of investment decisions or strategies

⁶ See [Canada.ca/cn/revenue-agency/services/forms-publications/publications/charitiesnews-22/archived-registered-charities-newsletter-no-22-spring-2005.html](http://www.cra-arc.gc.ca/ce/revenue-agency/services/forms-publications/publications/charitiesnews-22/archived-registered-charities-newsletter-no-22-spring-2005.html)

- The expected total return from income and appreciation of capital
- Need for liquidity, regularity of income and preservation or appreciation of capital
- An asset's relationship or value to the purposes of the charity

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

Audit Findings:

The audit raised serious concerns relating to the Organization's investment activities, including failure to demonstrate that it has been diligent in managing its resources, and a resultant failure to demonstrate it is devoting substantially all of its resources to charitable activities or on gifts to qualified donees. In the course of the audit period, spanning from the date of registration March 30, 2011 through fiscal period ending December 31, 2017, the Organization has invested almost all of its assets in long-term investments and has spent minimal amounts in furtherance of charitable purposes.

In the initial period of registration (i.e. fiscal period ending December 31, 2011), the Organization reported revenues received from other registered charities totalling \$ 164,000.00, which was fully converted into an investment in a non-arm's length party. The charitable resources were in fact provided to founding director John G. Rooney for use under the terms of a general security agreement dated December 23, 2011. Although the financial statements described the investment as a 'debenture', the security agreement indicates the funds were provided to John G. Rooney individually and do not form an investment into a company.

Although the general security agreement specifies the recipient of charitable resources and identified an interest payable at a rate of 6%, the terms and conditions detailed in the agreement do not match the amount of funds applicable (i.e. states the recipient is indebted to the Organization in the amount of \$ 1,000,000.00 rather than \$ 164,000.00), the document failed to identify a term of duration ("shall remain in force and effect until all of the debtor's obligations have been satisfied in full"), and did not detail or describe applicable collateral secured by the Organization to safeguard and protect its assets.

In fiscal period ending December 31, 2012 the Organization reported charitable resources spent in furtherance of charitable purposes totalling \$ 2,870.00 (disbursement to a qualified donee representing minimum payment required to satisfy the Organization's calculated disbursement quota obligations). The subsequent T3010 Information Returns submitted by the Organization indicate it conducted no charitable activities in the 2013, 2014 and 2015 fiscal periods followed by reported disbursements to qualified donees in the 2016 fiscal period totalling \$ 16,000.00 (as noted in item # 1 above). In fiscal period ending December 31, 2017 the Organization reported a donation receipted contribution of a gift in kind received from director [REDACTED] (comprised of 5,000 Class "A" shares of for-profit corporation [REDACTED]).

The Organization did not report assets on Line 4100 of Schedule 6 (cash on hand) in any of the fiscal years of the audit period (2011 through 2017) and in fact stated in representations dated January 23, 2019 that the Organization does not maintain a bank account. The disbursement to qualified donees reported in 2012 of \$ 2,870.00 was concurrently recorded on 4320 as amounts owing to non-arm's length parties. The distribution of funds to qualified donees reported in the 2016 fiscal period totalling \$ 16,00.00 was recorded in the financial statements attached to the T3010 Information Return as "principal payments" owing from John G. Rooney to the Organization with the principal and accrued interest payable to the charity reduced by that amount. Similarly, in the 2017 fiscal year the balance owing to non-arm's length parties of \$ 2,870.00 was also recorded in the financial statements as a reduction of "principal payments" owing from John G. Rooney to the Organization.

It appears from the above transaction that the Organization's director and debtor to the charity, John G. Rooney, issued payment to the qualified donees and in recognition of the payments the charity reduced the accrued receivable balance due from John G. Rooney. These transactions may be required in the absence of a bank account held by the Organization. In the absence of appropriate supporting documentation, the transactions reported also indicate that the Organization has not directly issued payments to qualified donees since registration, resulting in nil charitable activities conducted. Further, in the absence of a bank account or funds maintained it would not be possible for the Organization to issue charitable resources to a qualified donee in future reporting periods.

These actions, in tandem with the fact that charitable resources were provided to a non-arm's length representative, give rise to serious concerns that the Organization is not devoting substantially all of its resources to charitable purposes and that the directors / trustees of the charity have not fulfilled their fiduciary duties.

In correspondence dated December 11, 2018, the CRA requested the Organization provide information and documentation relating to its investment activities. As stated in the correspondence: "documentation related to the investments should at least include the following but not limited to: the type of the investments, who the investments are with, if the investments are at arm's length, the interest rate, the interest income, duration, how the investments are valued, and a copy of the investments agreement and/or share certificate".

In response, the Organization provided a general security agreement for the 2011 investment in non-arm's length parties (which, as noted above does not reflect the amount of funds originally reported as invested), a donation receipt identifying the contribution of corporate shares from [REDACTED] to the Organization coupled with a "declaration of trust" confirming the shares are held by John G. Rooney in trust for the Organization (signed only by Jon G. Rooney).

Notwithstanding the lack of segregation and internal controls demonstrated in the course of the applicable transactions (i.e. charitable resources provided to a non-arm's length person and retention of gifted shares by donor, director [REDACTED]), the Organization failed to provide information concerning the intended duration of its investments, the rate of return expected,

share certificates or share register demonstrating transfers occurred, and most importantly, the basis for valuation applied in determining the rate of \$ 35.00 per share applicable in the donation receipt issued.

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

Although the Organization has reported interest earnings in relation to the original provision of funds to its director John G. Rooney, the amounts recorded have been consistently added to the total balance receivable (with reductions to recognize funds issued to qualified donees, presumably on the Organization's behalf). As the applicable general security agreement does not identify a term of duration and no amounts have been recorded as received from the debtor John G. Rooney from 2011 through 2017, there is no indication the Organization stands to realize gains from the charitable resources invested.

Additionally, the scope of the Organization's financial activities from the date of registration through December 31, 2017 indicate it has operated primarily in furtherance of a collateral, non-charitable purpose being an unrelated business activity of conducting investments⁷. The contrast of resources devoted to investments and resources devoted to charitable purposes are summarized as follows:

| | <u>Total Investments</u> | <u>Reported Earnings (interest)</u> | <u>Total Charitable Spending (gifts to qualified donees)</u> |
|------|--------------------------|---|--|
| 2011 | \$ 164,000.00 | \$ 0.00 | \$ 0.00 |
| 2012 | 0.00 | 12,649.26 | 2,870.00 |
| 2013 | 0.00 | 17,588.96 | 0.00 |
| 2014 | 0.00 | 18,644.00 | 0.00 |
| 2015 | 0.00 | 19,763.00 | 0.00 |
| 2016 | 0.00 | 20,950.00 | 16,000.00 |
| 2017 | <u>175,000.00</u> | <u>21,245.00</u> | <u>0.00</u> |
| | <u>\$ 339,000.00</u> | <u>\$ 110,840.22</u> | <u>\$ 18,870.00</u> |

Note: the amounts identified above as disbursed to qualified donees has not been demonstrated as charitable resources actually distributed by the Organization itself.

In correspondence of September 17, 2018, issued to the Organization, the CRA expressed concerns with respect to an identified ineligible individual listed in form T1235 of the T3010

⁷ See What is a Related Business (<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-019-what-a-related-business>)

Information Returns. When an ineligible individual is found to be in a position to manage and/or control the operations of a registered charitable organization, a greater documentary burden is created for the charity to demonstrate that it maintained adequate internal controls and decision-making processes (including review, vetting and approval) to ensure the safeguarding of its charitable resources. Notwithstanding the demonstrated resignation of the ineligible individual effective October 15, 2018, the additional directors of the Organization retain the fiscal responsibilities described above and are not absolved of ensuring sufficient due diligence is followed to safeguard charitable resources and to carry out charitable purposes for which it was registered.

Summary

It is our position that the Organization has demonstrated a failure to fulfill its fiduciary duties as a trustee of public funds such that it did not place its charitable resources at undue risk, and failed to demonstrate that it has operated for the purpose of devoting its resources to charitable activities in furtherance of charitable purposes. The recognition of amounts reported as gifted to qualified donees as reductions of principal payments receivable from the Organization's director, coupled with the lack of a bank account maintained to allow financial transactions, provide strong indications the Organization has conducted no charitable activities through the entirety of the audit period. For the reasons detailed above, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failure to maintain adequate books and records

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

- (a) information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it;
- (c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act."

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

- (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as prescribed; and
- (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the

expiration of six years from the date of the last taxation year to which the records and books relate.”

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked,⁸
- 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,⁹ and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.¹⁰

Audit Findings:

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

The books and records provided during the audit did not include supporting documentation demonstrating sufficient internal controls were maintained by the Organization. No meeting minutes or director's resolutions were provided to demonstrate the Board meets on a regular basis to discuss relevant issues and to oversee the operations of the Organization. The books and records failed to demonstrate adequate segregation of duties, and access restriction to resources of the Organization.

Internal Controls

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

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

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

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

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

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

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

The books and records failed to demonstrate adequate segregation of duties and access restrictions established to the resources of the Organization. The donation receipt acknowledging a contribution of corporate shares by [REDACTED] was signed by the donor himself, and a declaration of trust indicating the contributed shares were being held in trust by John G. Rooney for the Organization was signed by John G. Rooney solely.

Investment of Charitable Resources

As noted in item 3. above, the Organization failed to provide documentation and information to address CRA queries presented in correspondence dated December 11, 2019. The contribution of corporate shares (5,000 Class "A" shares of [REDACTED] was not supported by share certificates or a share register demonstrating the transfer of shares actually occurred nor was documentation provided to support the valuation of the \$ 35.00 per share rate applicable.

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

The transfer of shares reported in the fiscal period ending December 31, 2017 was not valued and/or facilitated by an independent third party and no documentation was provided to demonstrate a transfer actually occurred, which raised serious concerns regarding the lack of internal controls applied by the directors of the charity, as well as potential conferral of undue and/or private benefits.

Documentary support was specifically required to support the value of shares recognized via donation receipt. Shares of the applicable company [REDACTED] were distributed on September 9, 2016, at a rate of \$6.00 per share¹¹ however the shares purchased by the Organization as at December 1, 2017, were at a rate of \$ 35.00 per share. This significant

¹¹ See www.sedar.com (Form 45-106F1 Report of Exempt Distribution)

increase provides an additional burden to substantiate the valuation applied for the transaction. In addition to the question of whether an actual gift of property occurred, and whether the issuance of a donation receipt in recognition of corporate shares represents a prudent use of the Organization's charitable resources, the expectation of due diligence to satisfy the fiduciary duties of the representatives governing the operations of the registered charity cannot be met in the absence of adequate documentation to demonstrate fair market value.

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

With respect to the statements concerning investment activities outlined in the Organization's governing documents, it is required to maintain adequate books and records to demonstrate the described considerations were fulfilled. As the provision of charitable resources to non-arm's length representative John G. Rooney was not supported by documentation demonstrating a reasonable and prudent evaluation of the use of charitable resources for the intended purpose of furthering charitable purposes, the Organization has demonstrated a failure to satisfy the requirements of subsection 230(2) of the Act.

Additionally, the Organization's lack of a bank account and recorded transactions identifying reported disbursements of funds to qualified donees as reductions of amounts payable to the Organization by director John G. Rooney, the books and records failed to demonstrate it carried out charitable activities at any time in the audit period or that the Organization actually fulfilled its disbursement quota obligations.

Finally, the lack of documentation or independent valuation of the corporate shares recognized via donation receipt resulted in inadequate books and records to substantiate the accuracy and eligibility of the donation receipt issued to (and signed by) a non-arm's length representative.

Summary

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

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

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

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires the registered charity to ensure the information on its official donation receipts is accurate.

Paragraph 230(2)(b) of the Act provides that every registered charity shall “keep records and books of account [...] at an address in Canada recorded with the Minister [...] [including] a duplicate¹² of each receipt containing prescribed information for a donation received by it”

Subsection 3501(1) of the Regulations provides that each official donation receipt that a registered charity issues must include, in a manner that cannot be readily altered, the prescribed contents of a receipt.

Audit Findings:

The audit conducted identified concerns relating to issuance of and procedures applicable to the only official donation receipt applicable to the audit period. In particular, deficiencies noted were as follows:

i) Information disclosures

The duplicate donation receipt provided by the Organization was found to generally include required information disclosures outlined in Regulation 3501(1) of the Act with the exception of a description of the an applicable appraiser and the fair market value of the gift (Regulation 3501(1)(e.1)(iii) and 3501(1)(h)(ii) respectively). As the contributed corporate shares were donated by a director of the organization, [REDACTED] and signed by himself in that capacity, the Organization was required to obtain an appraisal or other supporting documentation to establish an eligible fair market value of the gift.

ii) Internal controls / segregation of duties

As stated in i) above, the single donation receipt issued (receipt number [REDACTED] in the amount of

¹² The definitions found in general language dictionaries and in law dictionaries are sufficiently broad to include a "duplicate of a receipt" in almost any form.

\$ 175,000), was issued to listed director [REDACTED] who signed his own donation receipt as an authorized representative. The lack of adequate internal controls and segregation of duties results in an unsubstantiated fair market value of the non-cash gift in kind and potentially results in a conferral of undue benefits.

iii) Gift of Property

Following a request to provide books and records in relation to investment assets reported, the Organization failed to submit documentation and information demonstrating the transfer of corporate shares reported in the 2017 fiscal year occurred. As such, the Organization failed to demonstrate the applicable donation receipt issued in recognition of a non-cash gift of property represents an issuance in recognition of an eligible gift. In the absence of documentation demonstrating the transfer of shares occurred (example: share certificates, share registry, etc.) the reported transaction lacks the required transfer of property element as outlined in the CRA definition of an eligible gift¹³.

Summary:

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

The Organization's options:

a) Respond

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

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

¹³ See What is a Gift (www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift)

- giving notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

b) Do not respond

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

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

If you have any questions, please contact the undersigned at the telephone number listed below. My manager, Julie McCaffrey, may also be reached at (613) 850-7091.

Sincerely,

Ted Dubien
Assisted Compliance Section
Charities Directorate, Canada Revenue Agency
320 Queen Street, Tower A, Place de Ville
Ottawa ON K1A 0L5
Telephone: (613) 305-0442
Facsimile: (613) 541-7161

c.c.:

Enc. CRA correspondence dated September 17, 2018
CRA correspondence dated December 12, 2018

ROONEY FOUNDATION

January 29, 2021
Charities Directorate
Canada Revenue Agency
Assisted Compliance Section
320 Queen Street, Tower A, Place de Ville
Ottawa ON K1A 0L5

RECEIVED/REÇU

FEB 08 2021

CISD

Attention: Ted Dubien

Dear Sir:



RE: Audit of Rooney Foundation ("Foundation") BN 839039518 RR0001
Your File #3045341

Further to your letter dated November 4, 2020, and the Foundation's extension request letter to you dated December 3, 2020, the Foundation received your extension letter dated January 13, 2021 that provided for the extension date to February 1, 2021.

In summary, there is a lot of misinformation and misunderstandings in your letter dated November 4, 2020. In this letter and its attachments, I have provided new evidence and I will now summarize and outline the what I believe are the material and relevant facts in this case:

1. I have been [REDACTED] and I am familiar with the appropriate legal documents to document business transactions. I also familiar with Section 69 of the Income Tax Act and the non-arm's length requirements.

2. I am a Director and the President of the Foundation which is named after me. As a Director and the President of the Foundation, I have legal and fiduciary duties to the Foundation. I am also at non-arm's length with the Foundation, and consequently, I was extremely cautious that any transaction that I have with the Foundation be at provable fair market value and that the Foundation's legal documents for any transactions are correct under corporate and trust law. I have done so.
3. The Foundation is very small with only three (3) Directors/Members [REDACTED]. The Foundation does not have an office, and has no employees. I make all the final decisions for the Foundation, do all the accounting, and prepare the Foundation's Financial Statements and the Foundation's T3010s – Registered Charities Information Return.
4. The Foundation does not have a corporate bank account nor does it need one. I personally make all the payments on behalf of the Foundation including the payments to the qualified donees, and then charge the Foundation for these payments. I set up the appropriate accounting journal entries to record these transactions. For example, when I make a Charitable donation payment on behalf of the Foundation, the accounting Journal Entry is: DEBIT – *"Total amount of gifts to all qualified donees – Line 5050"* and CREDIT – *"Amounts owing to non-arm's length persons – Line 4320"*. Similarly, accounting Journal Entries are used to record interest income and the increase of the investment in the General Security Agreement ("GSA"), etc.
5. Although your comments about internal controls and segregation of duties may apply to large foundations, they are inapplicable in this case.
6. Since the Foundation was incorporated in 2011, the Foundation has had only two (2) investments.

7. The first investment was a 6% secured loan dated December 23, 2011 in the amount of \$164,000 to me. The Foundation used the proper legal document, a General Security Agreement ("GSA"), which described the Foundation's security for the loan. Over the years I accrued and journalized the 6% interest for the Foundation. In 2016, funds from this GSA were used to pay the Foundation's Qualified Donees \$16,000. This GSA was paid off in full in 2018. It was a successful investment for the Foundation.
8. The second investment was 5,000 shares of [REDACTED] [REDACTED] gifted to the Foundation on December 1, 2017 for \$175,000.00 (5,000 [REDACTED] shares @ \$35.00 = \$175,000.00).
[REDACTED]

Both the Foundation and I are at arm's length with [REDACTED]

Since I am at non-arm's length with the Foundation, I have to be able to provide evidence to prove the \$35.00 per [REDACTED] share for this gift on December 1, 2017. I have done so. Refer to the List of Attachments - #1 Attachment - my letter dated January 27, 2021 to Mr. Don M. Richards, of D.M. Richards Foundation, that provides the independent third-party evidence for the \$35.00 valuation of the [REDACTED] shares.

I will now comment to each of your four (4) areas of non-compliance in turn using the same numbering system as set out in your letter dated November 4, 2020.

1. A failure to meet disbursement quota (devotion of resources to charitable purposes)

I now acknowledge that subsection 149.1 (20) of the Income Tax Act ("ITA") imposes a limitation of one fiscal period for excess carry-back. From your letter, I now understand the importance of this subsection to fund qualified

donees annually. In hindsight, if I had been aware of the significance of subsection 149.1 (20), I would have personally funded the Foundation so that it could satisfy its distribution quota obligations annually. The Foundation is now current in its distribution quota requirements. It may be helpful to the Foundation if CRA could provide the Foundation with an education letter on all aspects of the distribution quota requirements for the future.

2. Failure to devote resources to charitable purposes

The Foundation complies with the requirement that it devotes all of its resources to charitable activities by only gifting to qualified donees. The Foundation does not intend to carry on its own charitable activities.

As I stated earlier, since I am at non-arm's length with the Foundation and I am aware of Section 69 of the Income Tax Act, I am extremely careful to ensure that any transactions that I have with the Foundation are at fair market value and that I use the proper legal documents.

There seems to be some confusion with your understanding of the GSA between the \$1,00,000 reference in the GSA and the Foundation's loan of \$164,000. The reference in the GSA to the \$1,000,000 refers only to the "*maximum possible loan*" that could be made to me whereas the Foundation's \$164,000 loan amount is the "*actual amount of the secured loan*". This concept is similar to the maximum line of credit or the maximum credit limit on a charge card [REDACTED]. In these cases, the borrower only pays interest on the "*actual amount*" and not on the maximum amount of the credit limit.

I also ensured that the proper legal documents for my gift of 5,000 [REDACTED] shares to the Foundation on December 1, 2017 were based on the appropriate corporate and trust law:

- (i) "*Deed of Gift*"
- (ii) "*Declaration of Trust*".

Regarding your comments about Mr. Robert I. Tennant, a seven (7) year Director of the Foundation since the Foundation's incorporation in 2011, being deemed to be an "*ineligible individual*" in your letter dated September 17, 2018, this CRA determination of Mr. Robert I. Tennant as an "*Ineligible individual*" was retroactive back to November 16, 2013. Consequently, Mr. Robert I. Tennant voluntarily resigned as a Director on October 15, 2018 even though he would become an "*eligible individual*" again 33 days later on November 17, 2018 (after a 5 year deemed restriction as an "*ineligible individual*").

3. Failure to maintain adequate books and records

The Foundation's accounting requirements are minimal. Since the Foundation does not have a corporate bank account, I prepared all the proper accounting Journal Entries to document all the Foundation's transactions. I have previously provided you with 100% of the accounting documentation including the accounting Journal Entries, Financial Statements, etc. for the year ended December 31, 2017. Refer to attachment #5 dated January 23, 2019.

I am unaware of any provisions of the Income Tax Act that would require the Foundation to maintain books and records other than those that have already been provided.

As I mentioned earlier, your comments about internal controls and segregation of duties, etc. may apply to large foundations, they are inapplicable in this case.

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

The Donation Receipt # [REDACTED] dated December 1, 2017 was, in fact, properly prepared and reported in the T3010 – Registered Charity Information Return. There is no requirement for the Foundation or anyone else to make a reference on the Donation Receipt to an appraisal on a gift-in-kind of private shares. The Foundation, however, does have the obligation to provide documentation to verify the value of the private shares if requested to do so by CRA. Since you have requested this information, please refer to the Attachment #1 - my letter to Mr. Don M. Richards dated January 27, 2021 – Schedule “A” – “*Evidence supporting the Fair Market Value of \$35.00*” (51 pages).

In conclusion, I believe that the Foundation has satisfied the four (4) areas of non-compliance. The Foundation made two (2) investments whose fair market values can be verified. Although the Foundation is small, has minimal activity and minimal accounting requirements, the Foundation has helped qualified donees in the past as it did in 2016 when it made distribution quota payments of \$16,000 to a number of Qualified Donees, in Edmonton, Alberta. The Foundation hopes to make further distribution quota payments in the future.

If you require any further information, please let me know.

Yours truly

[REDACTED]
John G. Rooney
Director
Rooney Foundation

APPENDIX A

Rooney Foundation

Audit of Rooney Foundation (the Organization) for the period from January 1, 2011 to December 31, 2017

Comments on Representations of January 29, 2021

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

1. Failed to meet its disbursement quota
2. Failed to devote resources to a charitable purpose
3. Failed to maintain adequate books and records
4. Issued donation receipts not in accordance with the Act and/or its Regulations

We have reviewed the Organization's submission dated January 29, 2021, and we maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the Income Tax Act (Act). As outlined below, we remain concerned about the non-compliance identified during the audit. The Organization has failed to provide additional documentation or reasonable explanations to address many of the areas of non-compliance identified. As such, it remains our opinion that the Organization's registration should be revoked.

Below please find:

- (1) A summary of the issues raised by the CRA in our letter of November 4, 2020;
- (2) A summary of responses provided by the Organization in its representation dated January 29, 2021; and
- (3) The CRA's response with respect to each issue.

1. Failure to meet disbursement quota

It is our view that the Organization failed to comply with the disbursement quota requirements outlined in subsection 149.1(1) of the Act in that the resources of the Organization have not been applied, expended or utilized in a manner shown to constitute a charitable use of its resources.

Organization Representations

The Organization stated the following:

- i) "The Foundation does not have a corporate bank account nor does it need one. I [John G. Rooney] personally make all the payments on behalf of the Foundation including the payments to the qualified donees, and then charge the Foundation for these payments"; and
- ii) "I now acknowledge that subsection 149.1(20) of the Income Tax Act imposes a limitation of one fiscal period for excess carry-back. From your letter, I now understand

the importance of this subsection to fund qualified donees annually. In hindsight, if I had been aware of subsection 149.1(20), I would have personally funded the Foundation so that it could satisfy its distribution quota obligations annually".

CRA response

The Organization confirmed the disbursement quota (DQ) shortfall in the audit period, however the acknowledgement does not alleviate our concerns applicable to the audit period. The DQ shortfall is material in nature as it represents 70% of the cumulative total DQ obligation for five fiscal periods (2013 through 2017), as demonstrated below:

| | <u>DQ obligation</u> |
|----------------|----------------------|
| FYE 2013-12-31 | 8,000.00 |
| FYE 2014-12-31 | 10,568.00 |
| FYE 2015-12-31 | 11,202.00 |
| FYE 2016-12-31 | 11,874.00 |
| FYE 2017-12-31 | <u>12,307.00</u> |
| Total | 53,951.00 |
| DQ shortfall | 37,951.00 |
| Ratio: | 70% |

In addition, as noted in our letter of November 4, 2020, the above calculations recognize a reported remittance of \$16,000.00 to qualified donees (QD) in the fiscal period ended December 31, 2016, which was not made by the Organization itself.

The \$16,000.00 amount represented a cumulative total of payments reported as remitted to QDs by director John G. Rooney on the Organization's behalf. The Organization failed to provide documentation to verify the payments were in fact made or to demonstrate any payments reported were in fact made on the Organization's behalf. The latter documentation is further required to confirm the Organization's representation as payor as well as to eliminate the donative intent applicable to the source John G. Rooney to ensure no donation deduction is eligible. In the absence of appropriate supporting documentation, the transactions reported indicate that the Organization has not directly issued payments to qualified donees since registration, resulting in nil charitable activities conducted.

DQ represents a minimum spending requirement of registered Canadian charitable organizations. Per subsection 149.1(1) of the Act, charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes.

Our concerns have not been alleviated and it remains our position that the Organization failed to comply with the disbursement quota requirements outlined in subsection 149.1(1) of the Act in that the resources of the Organization have not been applied, expended or utilized in a manner shown to constitute a charitable use of its resources.

2. Failure to devote resources to charitable purposes

It is our position that the Organization has demonstrated a failure to fulfill its fiduciary duties as a trustee of public funds such that it placed its charitable resources at undue risk, and failed to demonstrate that it has operated for the purpose of devoting its resources to charitable activities in furtherance of charitable purposes.

Organization Representations

The Organization stated the following:

- i) "Since I [John G. Rooney] am at non-arm's length with the Foundation and I am aware of Section 69 of the Income Tax Act, I am extremely careful to ensure that any transactions that I have with the Foundation are at fair market value and that I use the proper legal documents";
- ii) "The reference in the GSA [General Security Agreement] to the \$1,000,000 refers only to the "maximum possible loan" that could be made to me whereas the Foundation's \$164,000 loan amount is the "actual amount of the secured loan"; and
- iii) "I also ensured that the proper legal documents for [REDACTED] 5,000 [REDACTED] [REDACTED] shares to the Foundation on December 1, 2017 were based on the appropriate corporate and trust law:
 - (i) Deed of Gift
 - (ii) Declaration of Trust"

The representations submitted included a description of the 'exponential growth rate' potential of the [REDACTED] investment, comparable valuations for transactions of [REDACTED] shares to other investors, as well as an explanation for why the share transfers were conducted via 'deed of gift' and 'declaration of trust' documents.

CRA response

The Organization's representations failed to address the concerns outlined in our letter dated November 4, 2020. The general security agreement established in the Organization's first year of registration (2011) and carried through the audit period resulted in the entirety of funds received by the charity to be provided to director John G. Rooney. The document failed to identify a term of duration ("shall remain in force and effect until all of the debtor's obligations have been satisfied in full"), and did not detail or describe applicable collateral secured by the Organization to safeguard and protect its assets. The reported distributions of funds to QDs were recorded as 'principle payments' reducing the balance owing to the Organization by the non-arm's length representative, however as noted above, documentation was not provided to demonstrate the existence of the payments recognized. In the absence of appropriate supporting documentation, the Organization has not demonstrated that it has directly issued payments to qualified donees since registration, resulting in nil charitable activities conducted in the audit period.

A charity's directors / trustees are required to satisfy themselves that an investment, (in this case, a transfer of 100% of available resources to a director of the Organization), represents a

reasonable and prudent use of the charity's assets. Regarding the general security agreement, the Organization failed to establish an investment plan or policy that takes into account a reasonable assessment of risk and return.

Regarding the donation of 5,000 shares of [REDACTED] received in the 2017 fiscal year, the Organization provided a copy of a 'deed of gift' between director [REDACTED] and the Organization with a copy of the official donation receipt (both dated December 1, 2017). The donated shares were held in trust under the terms of a 'declaration of trust' document. The Organization failed to satisfactorily address our concerns regarding the lack of internal controls and segregation of duties applicable to the donation transaction. The donation receipt issued to [REDACTED] in recognition of shares donated from a personal investment portfolio [REDACTED]
[REDACTED]

As noted, the acquisition and retention of the investment assets were conducted with a non-arm's length representative of the Organization. Transactions and arrangements between a charity and one of its directors creates a greater documentary burden for the charity to demonstrate that it maintained adequate internal controls and decision-making processes (including review, vetting and approval) to ensure the safeguarding of its charitable resources. If a charity enters into an arrangement with a non-arm's length representative without first independently verifying the applicable fair market value to be attributed to the transaction, there may be a more than incidental private benefit resulting from the arrangement.

The Organization provided a series of seven comparable purchases of shares from [REDACTED] by third parties from the period of August 3, 2017 through March 14, 2018 in support of the \$35.00 share value applicable to the transaction with John G. Rooney. Of the seven listed comparable transactions, only four occurred prior to the Organization's acquisition date of December 1, 2017. Three of the comparable third party entities identified were found to have non-arm's length relationships to the Organization via shared directors. As a result, the documentation provided in support of the applicable share value recognized did not represent adequate independent third party appraisals obtained by the Organization to support that the value of the donation receipt issued in recognition of the 5,000 [REDACTED] shares acquired.

The Organization's statement that the [REDACTED] shares are "legitimate exponential growth shares based on the CEC board of directors calculations", reinforces the lack of independent review and analysis conducted to establish a fair market value of the received donation.

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

The Organization failed to provide documentation demonstrating independent verification and assessment of the investment assets received and recognized via donation receipt. The Organization's provision of 100% of its charitable resources to a non-arm's length representative from 2011 through 2017 resulted in a lack of resources available to further charitable purposes. The Organization operated from the date of registration through December 31, 2017 in furtherance of a collateral, non-charitable purpose being an unrelated business activity of conducting investments, rather than in furtherance of charitable purposes.

Our concerns have not been alleviated and it remains our position that the Organization has demonstrated a failure to fulfill its fiduciary duties as a trustee of public funds such that it placed its charitable resources at undue risk, and failed to demonstrate that it has operated for the purpose of devoting its resources to charitable activities in furtherance of charitable purposes.

3. Failure to maintain adequate books and records

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

Organization Representations

The Organization stated the following:

- i) "The Foundation is very small with only three Directors [REDACTED] The Foundation does not have an office and has no employees. I [John G. Rooney] make all the final decisions for the Foundation, do all the accounting, and prepare all the Foundation's Financial Statements and the Foundation's T3010";
- ii) "Although your comments about internal controls and segregation of duties may apply to large foundations, they are inapplicable in this case"; and
- iii) "The Foundation's accounting requirements are minimal. Since the Foundation does not have a corporate bank account, I prepared all the proper accounting Journal Entries to document all the Foundation's transactions. I have previously provided you with 100% of the accounting documentation... I am unaware of any provisions of the Income Tax Act that would require the Foundation to maintain books and records other than those that have already been provided."

CRA response

We disagree with the Organization's position that internal controls and segregation of duties in the governance and operation of a registered charity is not applicable. As noted in our letter of November 4, 2020, a charity's books and records must adequately demonstrate that sufficient internal controls exist around the accounting system, the maintenance of the accounting records, the selection and application of internal policies and procedures, and the segregation of duties.

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

The books and records failed to demonstrate adequate segregation of duties and access restrictions established to the resources of the Organization. Specifically, the Organization failed to demonstrate adequate donation receipting practices via the segregation of duties in relation to the donation receipt issued to director [REDACTED] in fiscal period ended December 31, 2017. As noted above, the contribution of corporate shares by [REDACTED] was recognized via a donation receipt signed by the donor himself. The associated declaration of trust document indicating the contributed shares were being held in trust by John G. Rooney for the Organization [REDACTED] signed by John G. Rooney solely.

With respect to the Organization's investment of charitable resources into a non-arm's length investment asset (funds transferred to director John G. Rooney), the response failed to provide information detailing the considerations, evaluations and approvals conducted in the utilization of its charitable resources for non-charitable purposes, as well as the intended duration and expected return of the invested charitable resources.

The required books and records described in our letter of November 4, 2020 outlined documentation necessary to demonstrate the Organization's evaluation and assessment of investment assets with its charitable resources in a reasonable and prudent manner.

The Organization failed to provide documentation demonstrating the review, vetting, and verification policies and procedures undertaken in the approval and authorization of its investment decisions.

The Organization provided a list of comparative purchases of corporate shares from [REDACTED] however as noted above, non-arm's length relationships were identified with several of the third party entities listed. The corporate shares received from the non-arm's length donor were not supported by independent appraisal documentation demonstrating a reasonable and fair valuation in support of the donation receipt amount issued.

As a result, our concerns have not been alleviated and it remains our position that the Organization has demonstrated a failure to comply with the requirements of subsection 230(2) of the Act.

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

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

Organization Representations

The Organization stated the following:

- i) "The donation receipt # [REDACTED] dated December 1, 2017 was, in fact, properly prepared and reported in the T3010. There is no requirement for the Foundation or anyone else to make a reference on the donation receipt to an appraisal on **a gift-in-kind of private shares**. The Foundation, however, does have the obligation to provide documentation to verify the value of the private shares if requested to do so by the CRA. Since you have requested this information, please refer to the attachment".

As noted in section 2. above, the representations submitted included a description of the 'exponential growth rate' potential of the [REDACTED] investment, comparable valuations for transactions of [REDACTED] shares to other investors, as well as an explanation for why the share transfers were conducted via 'deed of gift' and 'declaration of trust' documents.

CRA response

As detailed in our letter of November 4, 2020, the donation of corporate shares received by the Organization was provided by a non-arm's length director from a personal investment portfolio. As a result of the non-arm's length nature of the transaction, as well as the lack of internal controls applied (donation receipt authorized by the donor solely), the Organization was required to obtain independent verification of the valuation of shares received to support the value reported on a corresponding donation receipt issued.

As described above, the documentation provided in support of the [REDACTED] share valuation assigned was not considered to be sufficiently independent from the Organization as a result of non-arm's relationships identified with several of the named comparative third party entities. An independent appraisal of the corporate share values provides assurance to the board of directors of a registered charity of a reasonable and reliable fair market value of non-cash gifts in kind received, and alleviates the risk of the potential conferral of undue benefits. Independent third party appraisers are identified in the information disclosures of a donation as required by Regulation 3501(1)(e.1)(iii) of the Act.

Our letter of November 4, 2020 identified a requirement for documentation in its books and records demonstrating the transfer of ownership of the donation receipted [REDACTED] shares to the charity actually occurred (share certificates, share registry). This documentation is necessary to demonstrate the reported transaction meets the required transfer of property element as outlined in the CRA definition of an eligible gift.

The Organization provided an explanation in its response stating the board of [REDACTED] maintains a policy to not transfer shares sold by [REDACTED] shareholders to others. As a result, any share transactions would require the [REDACTED] shareholder to hold the shares in trust for the beneficiary. The Organization provided a copy of a declaration of trust confirming the shares are held by John G. Rooney for the Organization however the document was signed by John G. Rooney

solely. Additionally, the Organization failed to provide documentation to demonstrate the stated policy of the [REDACTED] board with respect to the described share transfer limitations.

As a result, our concerns have not been alleviated and it remains our position that the Organization has issued receipts otherwise than in accordance with the Act and/or its Regulations.

APPENDIX B

Qualified Donees

149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

- (a) registered by the Minister and that is
 - (i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,
 - (ii) a municipality in Canada,
 - (iii) a municipal or public body performing a function of government in Canada that has applied for registration;
 - (iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or
 - (v) a foreign charity that has applied to the Minister for registration under subsection (26),
- (b) a registered charity,
- (b.1) a registered journalism organization,
- (c) a registered Canadian amateur athletic association, or
- (d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

149.1 (2) Revocation of registration of charitable organization

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

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift.

149.1 (3) Revocation of registration of public foundation

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

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

- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1 (4) Revocation of registration of private foundation

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

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

149.1 (4.1) Revocation of registration of registered charity

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

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

paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

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

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

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

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

(b) ceases to comply with the requirements of this Act for its registration;

(c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(e) fails to comply with or contravenes any of sections 230 to 231.5; or

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

168 (2) Revocation of Registration

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

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

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

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

168 (4) Objection to proposal or designation

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

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

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

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

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

A - B

where

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

(a) the fair market value of a property of the charity at the end of that taxation year,

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

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

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

188 (1.2) Winding-up period

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

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

188 (1.3) Eligible donee

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

- (a) a registered charity
 - (i) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity,

- (ii) that is not the subject of a suspension under subsection 188.2(1),
- (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
- (iv) that has filed all information returns required by subsection 149.1(14), and
- (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

188 (3) Transfer of property tax

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

which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

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

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

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

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

188 (5) Definitions – In this section,

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

$$\mathbf{A} - \mathbf{B}$$

where

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

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

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

$$\mathbf{A} - \mathbf{B}$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189 (6.1) Revoked charity to file returns

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

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

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

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period
 - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which

the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189 (6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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