



March 24, 2022

Darcy Nynych
Director
Slawa Foundation
42 Deerledge Trail
East St Paul MB R2E 1J6

BN: 8485 35431 RR0001
File #: 3051439

Dear Darcy Nynych:

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

The Canada Revenue Agency (CRA) understands the significant personal and economic impact of COVID-19 on Canadians. The CRA is aiming to be responsive and to operate in a way that balances these realities with its duty to administer Canada's tax laws and the obligations of all Canadians to comply with tax laws.

We are writing with respect to our letter dated January 14, 2019 (copy enclosed), in which Slawa Foundation (the Organization) was invited to respond to the findings of the audit conducted by the CRA for the periods from March 1, 2016 to February 28, 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 (Act).

We have reviewed and considered your written responses dated August 4, 2018, September 13, 2018, and March 11, 2019. Your replies have not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A, attached.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization issued donation receipts not in accordance with the Act, failed to devote all its resources to charitable purposes and activities, failed to maintain proper books and records, and contravened the provisions of the Act by maintaining an ineligible individual as a director, trustee, or officer of the charity. 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 January 14, 2019, and pursuant to subsection 168(1) and 149.1(3) 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
848535431RR0001	Slawa Foundation East St Paul MB

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

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

However, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of **30 days** from the date this letter was mailed. Even though the Organization may file a notice of objection with the CRA Appeals Branch within the 90 day time frame, in order to temporarily suspend the revocation process, the Organization must obtain an order from the Federal Court of Appeal.

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

Consequences of revocation

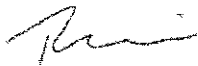
As of the effective date of revocation:

- 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 public institution 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 public institutions. 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 letters dated July 5, 2018, August 15, 2018, and January 14, 2019
- Appendix A
- Appendix B, Relevant provisions of the Act

c.c.: Robert Tennant
Edmonton AB



Canada Revenue
Agency

Agence du revenu
du Canada

Mr. Blaine Kriek
Director
Slawa Foundation
Suite 1165 5328 Calgary Trail NW
Edmonton AB T6H 4J8

BN: 848535431RR0001

File #: 3051439

July 5, 2018

SUBJECT: Audit of Slawa Foundation
Request for information and documentation

Dear Mr. Kriek:

We are writing to inform you that Slawa Foundation (the Organization) has been selected by the Canada Revenue Agency (CRA) for an audit as a registered charity under the Income Tax Act.

In order to complete our audit, we require the Organization to provide our office with the following information and documentation relating to its **fiscal period ending 2017-02-28**:

Official donation receipts issued for income tax purposes

1. Please provide us with a listing of all official donation receipts issued for donations received during the above-mentioned fiscal period. For ease of reference, this listing should include the following elements: the receipt number (in sequential order), the donor's name, the amount of the donation, and the total amount of donations received for each fiscal period. The list should also include the receipt numbers of any lost or cancelled receipts and identify the receipt that was issued to replace the lost or cancelled receipt.
2. In addition to the listing above, please provide us with a copy of official donation receipts issued to all donors during the above-mentioned fiscal period.

Canada

Investments on the Statement of Financial Position

1. The Organization reported the following investment on its Statement of Financial Position:

Assets

Current

Investments in non-arm's length persons	\$458,414
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Please provide us with documentation regarding this non-arm's length investment during the FPE 2017-02-28. For ease of reference, this documentation should include the following elements: who the investment is with, repayment terms, the interest rate, the interest income and a copy of the investment agreement.

Directors List

1. Please provide us with the list of directors during the fiscal period ended 2017-02-28.
2. In addition to the listing above, please provide us with a copy of the current list of directors.

The Organization must submit **all** requested information and documentation outlined above within **30 days of the date of this letter** to the address below. Failure to respond within the required timeframe could potentially result in the revocation of the Organization's registered status. Also, be advised that additional information may be requested during the audit.

The Act requires, under subsection 230(2), that registered charities maintain adequate books and records of account at a single address in Canada that is registered with the CRA. This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act as well as to enable the CRA to verify the accuracy of reported information through an audit.

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

Please note that the confidentiality provisions of the Act restrict us to discussing the issues in this letter with an authorized representative only. Normally this would be an individual listed as a current director/trustee on the Form T1235, Directors/Trustees and Like Officials Worksheet, which is included with Form T3010, Registered Charity Information Return, on file with the Canada Revenue Agency.

If there has been any change in directors/trustees of the Organization since it filed its last information return, please forward a copy of the revised directors/trustees list, found on our website above, signed by an authorized representative of the Organization.

If a third party is representing the Organization (not currently listed on file with the CRA), we require written authorization naming the individual, signed by an authorized representative of the Organization, explicitly authorizing that individual to discuss the Organization's file with us. Alternatively, you may complete and forward a copy of Form RC59, Business Consent for Access by Telephone and Mail, which is also available on our website.

Information affecting registered charities regarding the latest changes to the law, the new or revised publications, policies, etc. are all available on our website at canada.ca/charities-giving.

If you have any questions or require further information or clarification, please contact me at 613-670-0739.

Yours sincerely,



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



Canada Revenue
Agency

Agence du revenu
du Canada

Robert Tennant
Director
Slawa Foundation
Suite 1165 5328 Calgary Trail NW
Edmonton AB T6H 4J8

BN: 848535431RR0001
File #: 3051439

August 15, 2018

SUBJECT: Audit of Slawa Foundation
Request for additional information and documentation

Dear Robert Tennant:

We are in receipt of the documentation you submitted dated August 4, 2018 pertaining to the audit of Slawa Foundation (the Organization); however in order to complete our audit, we require the Organization to provide our office with the following additional information and documentation relating to its **fiscal period ending 2017-02-28**:

Official receipts issued for income tax purposes

1. The Organization issued an official donation receipt to [REDACTED] in the amount of \$450,000 on August 17, 2016. We require supporting documentation demonstrating how the funds for the \$450,000 donation were transferred from [REDACTED] to Slawa Foundation (the Organization). Specifically, we require a copy of bank statements, and the front and back of any applicable money order, bank transfer and/ or cancelled cheque which facilitated this transaction.
2. We require supporting financial documentation demonstrating how the \$450,000 was transferred from Slawa Foundation (the Organization) to [REDACTED] on August 17, 2016.
3. Please provide documentation detailing the source of the funds for the [REDACTED] bank draft, dated August 17, 2016 payable to [REDACTED]. Based on the documentation submitted on August 4, 2018, it is not clear who made this payment;

As per page 3 of your documentation dated August 4, 2018: "This DIRECTION TO PAY Agreement dated August 17, 2016 documented that [REDACTED] bank draft dated August 17, 2016 for \$450,000 was paid by him to the Slawa Foundation as a Charitable Donation on August 17, 2016."

Canada

As per page 5 of your documentation (dated August 4, 2018):

"This DIRECTION TO PAY Agreement confirmed that [REDACTED] bank draft dated August 17, 2016 of \$450,000 was paid by the Slawa Foundation to [REDACTED] for the purchase of the Long-term investment."

Based on the August 4, 2018 documents submitted by the Organization, the one [REDACTED] bank draft is being used as supporting documentation for two separate transactions. Therefore, supporting documentation is required for the above noted transactions. Specifically, please provide us with a copy of the back of the [REDACTED] bank draft.

Promissory Note

4. The documentation that the Organization submitted dated August 4, 2018 included a Promissory Note. The date of the Promissory Note is not clear as the Organization provided the following three dates for the Promissory Note; (1) August 16, 2016 to February 28, 2017, (2) August 6, 2017 and (3) 17th day of August 2016. The following paragraphs are as per page 4 of your documentation dated August 4, 2018 indicating different dates for the Promissory Note:
 - a. "The Current, Investments in non-arm's length persons of \$458,414 is composed of a Promissory Note of \$450,000, and interest on the Promissory Note of \$450,000 at 3 1/2% from **August 16, 2016 to February 28, 2017** of \$8,414."
 - b. "a copy of the Promissory Note dated **August 6, 2017**"
 - c. The Promissory Note itself has the following date: "Dated as of this **17th day of August 2016**."

Please provide us copies of any and all of the Promissory Notes including clarification of the actual date(s) of the note(s) as applicable.

Shares of [REDACTED]

5. As per page 5 of your documentation (dated August 4, 2018) the Organization stated the following:

"Slawa Foundation first purchased a Long-term investment on August 17, 2016 before selling this Long-term investment to Darcy Nynych" We require financial documentation to support your legal document (Agreement for the Sale and Purchase of Shares dated August 17, 2016) that Slawa Foundation (the Organization) purchased shares from [REDACTED] for the amount of \$450,000.

6. We also require financial documentation to support your legal document (Agreement for the Sale and Purchase of Shares dated August 17, 2016) that Slawa Foundation (the Organization) sold 20,000 of Class "A" shares of [REDACTED] to Darcy Nynych for the amount \$450,000.
7. Please provide us with a copy of the Share Certificates and the Share Register to determine who owns the 20,000 Class "A" shares of [REDACTED].
8. Initially, the 20,000 Class "A" shares of [REDACTED] were purchased from [REDACTED] by Slawa Foundation (the Organization) for \$450,000 on August 17, 2016. Followed by Darcy Nynych purchasing the same shares for the same price from Slawa Foundation (the Organization). Please provide us an explanation in writing the reason behind the Declaration of Trust dated August 17, 2016; what is the reason behind [REDACTED] holding the shares for Darcy Nynych when Darcy Nynych purchased the shares from Slawa Foundation (the Organization). In addition, please provide details of any relationship between Robert Tennant, [REDACTED] and [REDACTED].
9. Please provide documentation detailing how the fair market value of \$450,000 for the 20,000 Class "A" shares of [REDACTED] was determined.
10. In the documentation dated August 4, 2018, the Organization mentions several times "Long-term investment" (page 5), while on the Statement of Financial Position of fiscal period ending February 28, 2017 the Organization only reported Assets; Current; "Investment in non-arm's length persons" in the amount \$458,414. Please provide us with documentation to support the amount reported on the financial statements as well as information detailing what investments are included in the above noted correspondence. Specifically, are they short or long term investments noted in the correspondence and financial statements.

Books and Records

11. Please provide us a copy of all the accounting documentation: accountants working paper file, cash ledger, sales/purchase invoices and personal/loan records.

The Organization must submit all the information and documentation outlined above within **30 days of the date of this letter** to the address below. Failure to respond within the required timeframe could potentially result in the revocation of the Organization's registered status. Also, be advised that additional information may be requested during the audit.

Reminder:

The Act requires, under subsection 230(2), that registered charities maintain adequate books and records of account at a single address in Canada that is registered with the CRA. This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act as well as to enable the CRA to verify the accuracy of reported information through an audit.

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

Please note that the confidentiality provisions of the Act restrict us to discussing the issues in this letter with an authorized representative only. Normally this would be an individual listed as a current director/trustee on the Form T1235, Directors/Trustees and Like Officials Worksheet, which is included with Form T3010, Registered Charity Information Return, on file with the Canada Revenue Agency.

Consequently, if there has been any change in directors/trustees of the Organization since it filed its last information return, please forward a copy of the revised directors/trustees list, signed by an authorized representative of the Organization.

If a third party is representing the Organization (not currently listed on file with the CRA), we require written authorization naming the individual, signed by an authorized representative of the Organization, explicitly authorizing that individual to discuss the Organization's file with us. Alternatively, you may complete and forward a copy of Form RC59, Business Consent for Access by Telephone and Mail, which is also available on our website.

Information affecting registered charities regarding the latest changes to the law, the new or revised publications, policies, etc. are all available on our website at canada.ca/charities-giving.

If you have any questions or require further information or clarification, please contact me at 613-670-0739.

Yours sincerely,



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



Canada Revenue
Agency

Agence du revenu
du Canada

January 14, 2019

Robert Tennant
Director
Slawa Foundation
Suite 1165 5328 Calgary Trail NW
Edmonton AB T6H 4J8

BN: 848535431RR0001
File #: 3051439

Dear Robert Tennant:

Subject: Audit of Slawa Foundation

This letter results from the audit of the Slawa Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from March 1, 2016 to February 28, 2017.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Issuing receipts not in accordance with the Act	149.1(3), 168(1)(d), 188.1(9), 248(30), Regulation 3501
2.	Failure to devote resources to a charitable purpose	149.1(1), 168(1)(b), 248(1)
3.	Failure to maintain adequate books and records.	149.1(3), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)
4.	Having an ineligible individual that is a director, trustee, or officer of the charity	149.1(4.1)(e), 168(1)(b),

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

Identified areas of non-compliance

1. Official Donation Receipts

Under subsection 248(30) of the Act, a gift must be made voluntarily and with the intention to gift.

A gift at law is a voluntary transfer of property without consideration. A donor cannot be under an obligation to make a gift. If a gift is made as a result of a contractual or other obligation an official donation receipt cannot be issued. An official donation receipt can only be issued for a gift when an actual transfer from the donor to the charity took place. Registered charities must have evidence of ownership of the gift (donation) received for every official donation receipt it issues.

We received and reviewed your correspondence dated August 4, 2018 and September 13, 2018. In the Organization's response dated August 4, 2018, it was indicated that the Organization issued an official donation receipt to [REDACTED] for the amount \$450,000 on August 17, 2016.

It was also indicated at this time that the Organization did not have a corporate bank account. Therefore, the Organization documented the donation of \$450,000 from [REDACTED] by a **Direction to Pay Agreement** dated August 17, 2016. Based on this agreement, it appears that the \$450,000 went from [REDACTED] to the Organization and then from the Organization to [REDACTED]. However, the Organization only provided one [REDACTED] draft (draft number [REDACTED]) in relation to all the transactions mentioned above.

In addition to the Direction to Pay Agreement, the Organization also provided two Agreements for the Sale and Purchase of Shares, both dated August 17, 2016. One agreement is between [REDACTED] and the Organization, which stated the Organization purchased 20,000 Class "A" shares of [REDACTED] for \$450,000 from [REDACTED]. Another agreement between the Organization and Darcy Nynych that stated Darcy Nynych purchased the 20,000 Class "A" shares of [REDACTED] for \$450,000 from the Organization.

It is our position that the Organization did not receive a true donation of \$450,000 on August 17, 2016 by [REDACTED]. Based on the [REDACTED] Draft (draft number [REDACTED]) the funds were paid directly to [REDACTED] from [REDACTED] and the Organization never held this property at any point of time. The Direction to Pay Agreement provided by the Organization is not sufficient evidence to declare that the \$450,000 was paid to the Organization. Since the \$450,000 was never transferred from the donor to the Organization, the Organization should have not issued an official donation receipt in the amount of \$450,000 to [REDACTED].

In addition to the agreements listed above, the Organization also provided a Declaration of Trust dated August 17, 2016. This Declaration of Trust stipulates that the [REDACTED] is holding the 20,000 Class "A" shares [REDACTED] in trust for Darcy Nynych. It also stipulates that "all profits and advantages accruing on or arising from the Property shall be held by the Holder for the beneficiaries use, benefit, and advantage". Based on this document, it is evident that [REDACTED] still maintains use, benefit and advantage of the profits arising from these shares. Since [REDACTED] still maintains use and benefits arising from the profits, it is our position that a true gift did not occur because there was no transfer of property without consideration.

Based on the information and documentation that the Organization provided during the audit, it is our view, that there are grounds to apply a penalty under paragraph 188.1(9) of the Act as well as grounds for revocation of the Organization's registration under paragraph 168(1)(b) of the Act. It is the CRA's intention to exercise its discretion to apply this penalty and revoke on this basis.

2. Failure to devote resources to a charitable purpose

When considering the definition of a "registered charity" in subsection 248(1) of the Act, along with the definition of a "charitable foundation", in section 149.1(1), which "means a corporation or trust that is constituted and operated exclusively for charitable purposes". It is our opinion that a charitable foundation **must** (emphasis added) conduct charitable activities.

Effective July 19, 2013, the Organization was granted charitable registration for the purposes found its governing document dated July 10, 2013, issued under the Canada Not-for-profit Corporations Act. Specifically the Organization was established to:

- a) to solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities as well as "qualified donees" under the provisions of the Income Tax Act; and
- b) to undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

However, since its registration the Organization has not conducted any charitable activities.

Our review of the Organization's Form T3010, Registered Charity Information Return, for the fiscal period end from February 28, 2014 to February 28, 2017, indicates that the Organization has not conducted any charitable activities and it has not made any gifts to qualified donees for the last four consecutive years. As such, it is our position that the Organization has failed to operate exclusively for charitable purposes.

It is our determination, there are grounds for revocation of the Organization's registration for failing to be "operated exclusively for charitable purposes" pursuant to the definition of charitable foundation in paragraph 149.1(1) of the Act. There are also grounds for revocation of the Organization's registration under paragraph 149.1(3) and 168(1)(b) of the Act, and it is the CRA's intention to exercise its discretion to revoke on these basis.

3. Books and Records

Subsection 230(2) of the Act requires that every registered charity shall keep books and records 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 the revocation of its registration under this Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- (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.

This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act, as well as, to enable the CRA to verify the accuracy of reported information through an audit and to determine whether there are any grounds for revocation of the charity's registration.

The audit revealed that the Organization failed to maintain adequate books and records in accordance with subsection 230(2). Specifically, the Organization failed to maintain adequate books and records pertaining to the \$450,000 donation that it received during the fiscal period end of February 28, 2017.

The interest and investment income reported on line 4580 of Form T3010 for 2017 fiscal period does not reconcile with the financial statements of the Organization. The Organization reported an amount of \$4,814 on its T3010 at line 4580, total interest and investment income received or earned, while it reported an amount of \$8,414 in interest on its financial statements.

Under paragraph 188.2(2)(a), a charity may receive a notice of suspension of its authority to issue an official donation receipt if it contravenes subsection 230(2), which is related to books and records. It is our position that there may be grounds for sanctions under this paragraph of the Act. Similarly, 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.

The Organization's failure to fulfill its requirement to maintain adequate books and records, as described above, constitutes material non-compliance. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act. Note that both paragraphs 168(1)(e) and 188.2(2)(a) can be applied to address this non-compliant behavior.

4. Ineligible Individuals

The Act provides the CRA with the discretionary authority to suspend or revoke the registration of a registered charity where an ineligible individual is a director, trustee, officer or like official, or if such an individual controls or manages the charity directly or indirectly. As detailed below, it appears that one director of the Organization is an ineligible individual.

Legislation

The definition of "ineligible individual" at subsection 149.1(1) of the Act reads,

"Ineligible individual," at any time, means a person who has been

- (a) convicted of a relevant criminal offence unless it is a conviction for which
 - (i) a pardon has been granted and the pardon has not been revoked or ceased to have effect, or
 - (ii) a record suspension has been ordered under the Criminal Records Act and the record suspension has not been revoked or ceased to have effect,
- (b) convicted of a relevant offence in the five-year period preceding that time,
- (c) a director, trustee, officer or like official of a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which the registration of the charity or association was revoked in the five-year period preceding that time,
- (d) an individual who controlled or managed, directly or indirectly, in any manner whatever, a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which its registration was revoked in the five-year period preceding that time, or
- (e) a promoter in respect of a tax shelter that involved a registered charity or a registered Canadian amateur athletic association, the registration of which was revoked in the five-year period preceding that time for reasons that included or were related to participation in the tax shelter.

Under section 149.1 (4.1)(e) of the Act, the CRA may revoke the registration 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.

We have concerns with the Organization's directors. Specifically, we are referring to Robert Tennant (Director). According to our records, Robert Tennant was previously listed as a Director of a charity, New Horizon Charitable Foundation when its registration was revoked on November 16, 2013, for serious breaches of the requirements for registration under the Act. As a result, Robert Tennant met the definition of ineligible individual from November 16, 2013 until November 15, 2018, and the Organization failed to him from its board of directors during this time.

The Organization's options:

a) Respond

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

b) Do not respond

The Organization may choose not to respond. In that case, the Director General of the Charities Directorate may issue a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My manager, Arlene Proctor, may also be reached at 613-670-9525.

Yours sincerely,



Fereshta Hedjran
Assisted Compliance Section
Charities Directorate
Canada Revenue Agency

Telephone: 613-670-0739
Toll Free: 1-800-267-2384
Facsimile: 613-957-8925
Address: Suite 1306
Tower A, Place de Ville
320 Queen Street
Ottawa ON K1A 0L5

c.c.: Darcy Nynych



APPENDIX A

Slawa Foundation

Audit of Slawa Foundation (the Organization) for the period from March 1, 2016 to February 28, 2017

Comments on the Organization's Representations of March 11, 2019

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

1. Issued receipts not in accordance with the Income Tax Act
2. Failed to devote resources to a charitable purpose
3. Failed to maintain adequate books and records
4. Had an ineligible individual that is a director, trustee, or officer of the charity

We have reviewed the Organization's submission dated March 11, 2019, and we maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the 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:

- i. A summary of the issues raised by the CRA in our letter of January 14, 2019;
- ii. A summary of responses provided by the Organization in its March 11, 2019, representation; and
- iii. The CRA's conclusion with respect to each issue.

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

A charity may only issue receipts for gifts made to it, which it is responsible for using to further its own charitable purposes. Organizations with receipting privileges may not issue receipts for gifts to third parties.¹

At law, a gift is a voluntary transfer of property without consideration. An essential element of a gift is that there be intent to donate by the donor. It must be clear that the donor intends to enrich the donee, by giving away property, and to grow poorer as a result of making the gift.

Furthermore, a "completed gift"² is a gift that is no longer in the donor's possession and control.

¹ See section 3500 of the Regulations.

² As defined by Black's Law Dictionary.

Donations subject to a general donor direction that it be used in a particular program operated by a charity are acceptable, provided that all decisions regarding utilization of the donation within a program rest with the charity, donations are used for the charity's own charitable activities - undertaken by the charity itself under its continued supervision, direction, and control or for gifting to "qualified donees" as defined in the Act, and no unacceptable private benefit accrues to the donor or any other person or entity. Compliance with these legal requirements is necessary to ensure that:

- i. any donor direction is general in nature;
- ii. the organization itself assumes actual responsibility for making the final decisions regarding usage; and
- iii. donors relinquish ownership and custody of the gift.

Issues:

The Organization issued an official donation receipt for an amount in recognition of property that had not been transferred to it. The Organization provided documentation to the CRA (dated August 4, 2018) which confirmed it issued an official donation receipt to [REDACTED] in the amount of \$450,000 on August 17, 2016. The Organization also stated, in the same representation, that it did not maintain a bank account, and as a result it recorded the \$450,000 donation via documentation in the form of a "Direction to Pay" dated August 17, 2016.

The Organization stated that the \$450,000 went from [REDACTED] to the Organization and then from the Organization to [REDACTED]. The Organization provided a single bank draft [REDACTED] draft number [REDACTED] in relation to the transactions mentioned above. The bank draft is from [REDACTED], payable to [REDACTED]. It appears that the Organization did not receive the property and the requirements of an 'eligible gift'³ were not met.

The Organization's response:

The Organization stated that it is of the view that the receipt is a proper donation receipt compliant with the requirements of the Act for registered charities. The bank draft was payable to [REDACTED] as the Organization did not have a bank account, in accordance with the direction of the donor and "Direction to Pay" dated August 17, 2016.

The CRA's conclusion:

It is our position that the Organization did not receive an eligible donation of \$450,000 on August 17, 2016, from [REDACTED]. Based on the documentation provided, funds totalling \$450,000 were paid directly from the donor to [REDACTED]. The Organization was not in possession of the property at any point of time.

³ See Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift

The "Direction to Pay" provided by the Organization is insufficient evidence to demonstrate that the \$450,000 in question was transferred to the Organization. Since the \$450,000 was not transferred from the donor to the Organization, and therefore never in the Organization's possession, [REDACTED] was not eligible to receive an official donation receipt.

In addition, it is our position that the transfer, and ultimate use of the funds, was directed by the donor. The Organization's March 11, 2019, response states that: "in accordance with the direction of the donor, the funds were flowed through to [REDACTED]...". A registered charity cannot issue an official donation receipt for income tax purposes if a donor has directed the charity to give the funds to a specified person, family, organization, or non-qualified donee.

The Organization has failed to alleviate the concerns presented in our letter of January 14, 2019. As a result of the concerns identified above, it remains our position that the Organization has issued receipts otherwise than in accordance with the Act. Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations or that contains false information. Issuing a donation receipt where there is no gift, no donative intent or the information on the receipt is incorrect, is not in accordance with the Act.

2. Failure to devote resources to a charitable purpose

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.⁴

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.

⁴ 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.

Fiduciary Duty

By virtue of their unique role, and as a means of "encouraging activities which are of special benefit to the community", 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."

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."

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
- 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.

Issues:

The audit revealed that the Organization has not complied with subsection 149.1(1) of the Act. Our review of its Form T3010, Registered Charity Information Return, and its financial statements indicates the Organization has not conducted charitable activities during the fiscal period under audit. As such, it is our position that the Organization has failed to operate exclusively for charitable purposes or to gift to qualified donees. The Organization's Board of Directors (Board) failed to demonstrate that it fulfilled its fiduciary responsibilities and ensured that it was operated in the public interest, and managed for the benefit of the public.

Further, the audit raised serious concerns relating to the Organization's investment activities, including a failure to demonstrate that it was diligent in managing its resources. The Organization devoted substantially all of its assets toward the purchase and sale of long-term investments via non-arm's length intermediaries.

The Organization's response:

The Organization stated that it is of the view that when applying the applicable provisions of the Act, it was under no obligation to make any gift to a qualified donee during the period from February 28, 2014 to February 28, 2017.

Further, the Organization stated that its founder, James A. Sapara, [REDACTED] shortly after establishing the Organization on October 15, 2015, and while it would have been preferable for the Organization to fulfill its charitable mandate in the first years of its existence, it was not in a position to do so [REDACTED]

On August 17, 2016, Darcy Nynych joined the Organization's Board and [REDACTED]. Since that date, the Organization has operated exclusively for charitable purposes by making gifts to qualified donees. In the Organization's view there are no grounds for revocation of the its charitable registration. The Organization enclosed a copy of Form T3010 for the fiscal period ended February 28, 2018.

The Organization also provided two "Agreements for the Sale and Purchase of Shares", both dated August 17, 2016. The first agreement was between [REDACTED] and the Organization, which stated the Organization had purchased 20,000 Class "A" shares of [REDACTED] (CEC) for \$450,000 from [REDACTED]

The second agreement was between the Organization and Darcy Nynych, which stated Darcy Nynych had purchased the 20,000 Class "A" shares of [REDACTED] for \$450,000 from the Organization. The second agreement was coupled with a "Promissory Note", also dated August 17, 2016, stating that Darcy Nynych is indebted and promises to pay the Organization, 'on demand', the \$450,000 plus interest (3.5%), for the 20,000 Class "A" shares of [REDACTED]

A "Declaration of Trust" was also provided, which stated the [REDACTED] shares are held by [REDACTED] in trust for Darcy Nynych.

The CRA's conclusion:

With respect to the Organization's representations that it was under no obligation to make any gift to a qualified donee in the period February 28, 2014 to February 28, 2017, we wish to confirm that per subsection 149.1(1) of the Act, charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes.

As the Act requires a registered charity be "constituted" and "operated" exclusively for charitable purposes, this means that in order to meet the legislative requirements for continued registration, it is not enough that a foundation is simply constituted exclusively for charitable purposes, but that it must also be actively operated exclusively for charitable purposes.

Regarding fiduciary duties and the Organization's investment of its charitable resources, it remains our position that the Organization failed to provide the basis for the valuation confirming the fair market value of the [REDACTED] shares at the stated rate of \$22.50 per share.

No information has been shared with, or otherwise obtained by, the CRA that indicates how the decision to invest the Organization's funds was reached, including whether the decision was reached in a fiscally prudent manner. The Organization provided no meeting minutes, investment policy, or other secondary documentation to demonstrate consideration of investment criteria, whether a review of 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. There is no indication the Organization stands to realize gains from the charitable resources it invested.

Further, one "Agreement for the Sale and Purchase of Shares" was signed by director Robert Tennant solely, which demonstrated a lack of segregation of duties and proper internal controls. Mr. Tennant also signed the agreement on behalf of both the vendor [REDACTED] and the purchaser (the Organization), which means the transaction was not conducted at arm's length. Finally, the shares involved in these transactions did not vest in the Organization's name. Rather, they remain held by [REDACTED] in trust for Darcy Nynych.

The Organization has failed to alleviate the concerns presented in our letter of January 14, 2019. As a result, it remains our position that the Organization has failed to operate exclusively for charitable purposes. As such, there are grounds for revocation of the Organization's registration for failing to be "operated exclusively for charitable purposes" pursuant to the definition of charitable foundation in paragraph 149.1(1) of the Act. In addition, the Organization failed to fulfill its fiduciary duties as a trustee of public funds such that it failed to ensure it did not place its charitable resources at undue risk.

Under paragraph 168(1)(b) of the Act, the registration of a charity may be revoked if it ceases to comply with the requirements of the Act for its registration. 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)(b) of the Act.

3. Failed 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.”

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,⁵
- 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,⁶ 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.⁷

Issues:

The audit revealed the Organization failed to satisfy the requirements of paragraph 230(2)(a) of the Act as the documentation maintained in support of information it reported was found to be incomplete and / or inadequate. The documentation provided to the CRA did not allow for the verification of accuracy, completeness, existence, and reasonability of the asset amounts the Organization reported, primarily in relation to the donation of \$450,000, the purchase and sale of the 20,000 Class “A” shares of [REDACTED] and information substantiating the value of the shares acquired. The Organization’s books and records did not provide adequate information to demonstrate sufficient internal controls were maintained by the Organization.

The books and records provided in the course of the audit did not contain meeting minutes or director’s resolutions to demonstrate the Board met 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 restriction of access to resources of the Organization.

Internal Controls

The 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 or detects error and fraud.

⁵ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

⁶ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93.

⁷ See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.

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 its 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 that the Organization maintained adequate segregation of duties and restricted access to its resources in an appropriate manner. As noted in Section 2, above, only one member of the Board, Mr. Tennant, signed one of the "Agreement for the Sale and Purchase of Shares".

Investment of Charitable Resources

The Organization failed to provide information detailing the considerations, evaluations and approvals carried out by the Board when using its charitable resources for non-charitable purposes. The Organization failed to provide information concerning the intended duration and expected return of the sale of shares.

In addition to a lack of books and records to demonstrate that a transfer of shares actually occurred, the CRA was not provided with an independent valuation of the shares reported in the fiscal period ending February 28, 2017. The Organization's failure to maintain adequate books and records raised serious concerns regarding the Organization's lack of internal controls, as well as the potential for it to confer an undue and/or private benefit.

Documentary support was specifically required to support the valuation of the [REDACTED] shares. The shares were distributed on September 9, 2016, at \$6 per share,⁸ however the shares purchased by the Organization on August 17, 2016, were valued at \$22.50 per share. This significant increase provides an additional burden on the Organization to substantiate the valuation applied for the transaction.

In addition to the question of whether an actual gift of property occurred, and whether the investment 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 an independent assessment of fair market value was obtained.

⁸ See www.sedar.com (Form 45-106F1 Report of Exempt Distribution)

The Organization's By-law number 13.5 states "the Board on behalf of the Corporation may acquire, ... shares in and securities of other corporations, ... for the further attainment of the Corporation's objects". By-law number 13.7 states "The Corporation may invest and deal with 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 an investment furthers objects and funding of the Corporation 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.

Finally, the Organization failed to demonstrate that the donation receipt issued in the 2017 fiscal period was in recognition of an eligible gift (see section 1. above). In the absence of documentation confirming a transfer of property occurred between the donor and the charity, the reported transaction lacks the required transfer of property element as outlined in the CRA definition of an eligible gift.

The Organization's response:

The Organization stated that it is of the view that proper books and records to the extent available have been maintained by the Organization and provided to the CRA with respect to the \$450,000 donation.

Further, the Organization stated that it is unaware of any provisions of the Act that would require it to maintain books and records other than those which have been provided. The Organization is of the view that the books and records maintained and supplied are adequately compliant with the Act.

The CRA's conclusion:

The Organization has demonstrated a failure to satisfy the requirements of subsection 230(2) of the Act with respect to documentation demonstrating a reasonable and prudent evaluation of the use of charitable resources for the intended purpose of furthering charitable purposes of the Organization. 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 accuracy and completeness 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.

The Organization has failed to alleviate the concerns presented in our letter of January 14, 2019. As such, it remains 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. Had an ineligible individual that is a director, trustee, or officer of the charity

Under section 149.1 (4.1)(e) of the Act, the CRA may revoke the registration 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.

Issues:

The audit revealed that the Organization had an ineligible individual on its Board - Mr. Robert Tennant, who served on the Board from November 16, 2013 until November 16, 2018 - and that it failed to remove the ineligible individual from its board during this time.

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.

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.

The Organization's response:

The Organization stated that during the audit period neither it nor Mr. Tennant were aware that Mr. Tennant was an ineligible individual, and that Mr. Tennant's period of ineligibility expired effective November 16, 2018. It also stated "In the circumstances we consider it to be unduly harsh to suggest that the Foundation be deregistered as a result of the inadvertent presence of a potentially "ineligible individual" on the Board of the Foundation."

The CRA's conclusion:

The purpose of the ineligible individual paragraph in our letter of January 14, 2019, was to formally notify the Organization about this area of non-compliance, and to accordingly notify that the registration of a registered charity may be revoked for having an ineligible individual on its Board.

It is understood that effective November 16, 2018, Mr. Tennant no longer met the definition of ineligible individual under the Act; However, during the period under audit, when serious non-compliance was detected, he was a member of the Organization's Board and carried out business on its behalf.

In this regard we note that the activities undertaken by Mr. Tennant are directly connected to the non-compliance for which the CRA is proposing to revoke the Organization's charitable registration.

Further, while Mr. Tennant's status as an ineligible individual has elapsed, the Organization was not absolved of its responsibility to ensure sufficient due diligence was undertaken during the audit period in order to safeguard its charitable resources and pursue the charitable purposes for which it was registered. The other members of the Organization's Board retained the fiscal responsibilities described above.

We have considered the Organization's representation dated March 11, 2019. It is our determination to proceed with enforcement of 149.1(4.1)(e) on the grounds of failing to remove an ineligible individual from the management and control of the charity.

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

189 (6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

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

exceeds

 - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which

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

189 (6.3) Reduction of liability for penalties

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

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

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

189 (7) Minister may assess

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