



September 8, 2022

REGISTERED MAIL

Michael Aymong
Director
Brightline Foundation
[REDACTED]

BN: 80617 6350 RR0001
File #: 3038576

Dear Michael Aymong:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated May 16, 2019 (copy enclosed), in which Brightline Foundation (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from April 1, 2010, to March 31, 2015, and explain why the registration of the Foundation should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written responses dated August 10, 2019, and August 15, 2019, respectively. With respect to our position on a lack of donative intent, we are prepared to accept your representations at this time as they solely relate to the definition of a gift at law. However, your replies have not alleviated our concern with respect to the Foundation's issuance of official donation receipts that were not issued in accordance with the Act. For this reason alone, there are grounds for the revocation of the Foundation's registration. Our concern is explained below.

Fair market value (FMV)

The Act requires a registered charity to ensure the information on its official donation receipts is accurate. The requirements for the contents of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing tax receipts other than in accordance with the Act or that contain false information.

The Act does not provide specific guidance in determining how a gift of public shares should be valued. A careful review of the facts of each situation should be made to determine the FMV. Given the wide disparity of property donated to registered charities, it is a charity's responsibility to determine the most appropriate methods and procedures to determine the FMV. The CRA highly recommends the use of an independent appraiser.

As a general rule, the CRA has accepted the use of the closing bid price of a public share on the date it is received or the mid-point between the high and the low trading prices for the day, whichever provides the best indicator, given the circumstances, of the FMV on

normal and active market trading. However, there are times when other factors may have to be taken into consideration in determining the FMV. The onus is on the charity to consider all of these factors when determining a share's FMV. The following is a partial listing of the factors which could impact a share's FMV: the size of the block of shares in relation to the whole; the volume traded; the attributes of the shares; whether the donor has control or was a minority shareholder; whether there were any restrictions on the transferability of the shares; and whether the shares were thinly traded, which would require a review of trades over a longer period of time.

As explained in our May 16, 2019, letter, the CRA's Business Equity Valuation (BEV) area determined that the FMV of the [REDACTED] shares was substantially less than the tax-receipted amounts. It is our position that the share values provided by BEV take into consideration factors that were not reflected in the trading prices on the day the shares were transferred to the Foundation. The responsibility lies with the Foundation to ensure that the donation receipts are issued for the property at their FMV. Furthermore, the Act requires that donation receipts issued for property, other than cash, are recorded at "the fair market value of the property at the time the gift is made." Although the Foundation indicated in its representations that it does not agree with the BEV determination, we have not received any additional facts or documentation that would indicate that we have misunderstood or not considered all of the relevant information when valuing these shares.

Consequently, it is our view that the Foundation has not alleviated our concerns in this matter, and it remains our position that the Foundation's charitable donation receipts were grossly inflated in a series of non-arm's length transactions. As such, under paragraph 168(1)(d) of the Act, the registration of a registered charity may be revoked if it fails to issue tax receipts other than in accordance with the Act or that contain false information.

Conclusion

The audit by the CRA found that the Foundation is not complying with the requirements set out in the Act. In particular, it was found that the Foundation provided donation receipts for property to non-arm's length parties in which the tax-receipted amounts that were used did not accurately represent the FMV of the property. For this reason, it is the position of the CRA that the Foundation no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for the reasons mentioned in our letter dated May 16, 2019, and pursuant to subsection 168(1) of the Act, we hereby notify you of our intention to revoke the registration of the Foundation. By virtue of subsection 168(2) of the Act, 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) and 168(1)(d) 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
806176350RR0001	Brightline Foundation Vancouver BC

In addition, due to the serious nature of non-compliance found in the audit, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

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

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

However, please note that even if the Organization files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

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

Consequences of revocation

As of the effective date of revocation:

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

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

Yours sincerely,

Sharmila P. Khare

Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A, Relevant provisions of the Act
- CRA letter dated May 16, 2019
- Foundation's representations dated August 10, 2019, and August 15, 2019

c.c.: Chris Dikeakos

Qualified Donees

149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

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

149.1 (4) Revocation of registration of private foundation

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

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

149.1 (4.1) Revocation of registration of registered charity

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

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

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

168 (2) Revocation of Registration

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

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

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

168 (4) Objection to proposal or designation

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

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

- (a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a

registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) [Repealed, 2011, c. 24, s. 55]
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),
- (c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

188 (1.1) Revocation tax

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

$$A - B$$

where

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

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

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

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

188 (1.2) Winding-up period

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

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

188 (1.3) Eligible donee

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

(a) a registered charity

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

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

(a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(b) the charity has, before the time that the Minister has so registered the charity,

(i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and

(ii) filed all information returns required by or under this Act to be filed on or before that time.

188 (3) Transfer of property tax

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

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

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

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

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

188 (5) Definitions – In this section,

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

A - B

where

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

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

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

A - B

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

189 (6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

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

exceeds

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

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

189 (6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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



REGISTERED MAIL

COPY

May 16, 2019

Blake Bromley
Director
Brightline Foundation
1250 - 1500 W. Georgia St.
Box 62
Vancouver, BC V6G 2Z6

BN: 80617 6350 RR0001
File #: 3038576

Dear Blake Bromley:

Subject: Audit of Brightline Foundation

This letter results from the audit of Brightline Foundation (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period from April 1, 2010 - March 31, 2015.

On May 14, 2019 the Foundation was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following area.

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Issuing receipts not in accordance with the Act	118.1, 168(1)(d) Reg. 3500, 3501(1), and 3501(1.1)

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

Facts identified during the audit:

- On December 20, 2010, [REDACTED] changed its name to [REDACTED]
- On December 23, 2010, Eve Aymong donated 1,000,000 shares of [REDACTED] to the Foundation

- An official donation receipt dated April 15, 2011 was issued in the amount of \$350,000 to Eve Aymong for the donation of 1,000,000 [REDACTED] shares on December 23, 2010 (The official donation receipt which was issued by the Foundation, indicated that the donated shares were from [REDACTED].)
- The official donation receipt was issued based on the over-the-counter trading price (\$3.35/share) of [REDACTED] shares on December 23, 2010
- At the time of donation Eve Aymong was a director of the Foundation
- On March 28, 2011, Eve Aymong donated 1,352,456 shares of [REDACTED] to the Foundation
- An official donation receipt dated September 30, 2011 was issued in the amount of \$743,850 to Eve Aymong for the donation of 1,352,456 [REDACTED] shares on March 28, 2011
- The official donation receipt was issued based on the over-the-counter trading price (\$.55/share) of [REDACTED] shares on March 28, 2011
- At the time of donation Eve Aymong was a director of the Foundation
- For the Foundation's year ending March 31, 2011, it reported 2,352,456 [REDACTED] shares at \$1,093,850 on its Registered Charity Information Return (T3010)
- For the Foundation's year ending March 31, 2014, it wrote down the value of the [REDACTED] shares in the amount of \$976,228, resulting in a revised asset value of \$117,622 (1,093,850 - 976,228) as reported on its Registered Charity Information Return (T3010)
- For the Foundation's year ending March 31, 2015, it wrote down the value of the [REDACTED] shares in the amount of \$58,811, resulting in a revised asset value of \$58,811 (117,622 - 58,811) as reported on its Registered Charity Information Return (T3010).

Identified areas of non-compliance:

1. Issuing receipts not in accordance with the Act

It is our position that the Foundation has contravened the Income Tax Act by accepting and issuing official donation receipts for transactions that do not qualify as gifts. During 2011, the Foundation issued official donation receipts in the amount of \$1,093,850¹ for donations of [REDACTED] shares. We have determined that the property for which the official donation receipts were issued, was not a gift at law and the receipted values were grossly inflated.

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. The Act requires a registered charity to ensure the information on its official donation receipts is accurate. The requirements for the content of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing

¹ The Company's common stock was traded on an Over-the-counter Bulletin Board (OTCBB) under the symbol of [REDACTED]. The OTCBB is an inter-dealer quotation system that provides historical trading information. Historical trading prices for [REDACTED]'s common shares were determined from Stockwatch and Google Finance.

official donation receipts for a gift otherwise than in accordance with the Act and the regulations, or that contains false information.

It is of particular importance that a registered charity reports the correct value of the gift on its tax receipts. Given the potential uncertainty over their valuation, the Act stipulates that the "fair-market value" (FMV) of a gift of non-cash property to be reported on an official donation receipt. The CRA recognizes the complexity of valuating non-cash property and recommends the use of an independent appraiser where a registered charity issues an official donation receipt of significant value for a gift-in-kind. We recognize that appraisals are not required under the Act or its Regulations; however, it is our view that the onus remains with the charity to ensure the value assigned to non-cash gifts received, is reflective of the factual fair market value of the goods being received. For property with a value in excess of \$1,000, we strongly recommend that the property be appraised by an independent third party². The person determining the fair market value of the item should be competent and qualified to evaluate the particular property being donated, as well as be knowledgeable about the marketplace for the specific property. They should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the Uniform Standards of Professional Appraisal Practice or the standards of the profession.

Furthermore, a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

A charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. We are not proposing these penalties at this time.

Lack of Donative Intent

In order to qualify as a charitable donation, there must be a true gift at common law. A true gift is a voluntary transfer of property from a donor, who must freely dispose of the property to a donee who receives the property given. The transaction may not result directly or indirectly in any right, privilege, benefit or advantage to the donor or to the person designated by the donor. Any legal obligation of the donor would cause the transfer to lose its status as a gift.

An essential element of a gift is *animus donandi*; meaning, that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee by giving away property, and to generally grow poorer as a result of making the gift. It is our position that the ecoTECH shares received by the Foundation did not constitute a gift at law. A gift must be a gift at law in order for it to be a valid charitable gift under section 118.1 of the Act.

In *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 at paragraph 16, Bowie J. enlarged on the notion of "donative intent":

² An independent party is one who is not affiliated with the charity or the originator of the property.

[16] Much has been written on the subject of charitable donations over the years. The law, however, is in my view quite clear. I am bound by the decision of the Federal Court of Appeal in *The Queen v. Friedberg*, among others. These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative.

In *Coombs et al v. The Queen*, 2008 DTC 4004, Woods J listed the requisite elements of this definition as follows:

[15] First, it is necessary that the gifted property be owned by the donor, second that the transfer to the charity be voluntary, third that no consideration flow to the donor in return for the gift, and fourth that the subject of the gift be property, which distinguishes it from providing services to the charity. These elements reflect the general notion that a taxpayer must have a donative intent in regards to the transfer of property to the charity. [Emphasis added]

It is our view that the primary motivation of the donor was not to enrich the Foundation. As such, there was no intention to make a "gift" within the meaning assigned at section 118.1 of the Act. In our view, these transactions, given the combination of the excessive or inflated tax credits and other benefits received, lack the requisite *animus donandi* to be considered as a gift.

Fair Market Value (FMV)

Regulation 3501(1.1)(h)(ii) requires every registered charity to report the fair market value of a gift of property on an official donation receipt.

The Business Equity Valuations (BEV) section of CRA reviewed the tax-receipted values which were used by the Foundation for the donation of the [REDACTED] shares. Valuations were completed to determine if the over-the-counter trading prices of the shares, which were used for tax-receipting purposes, were reflective of the "actual" market value of the shares. Based upon this review, it was determined that the FMV for the donated shares is as follows:

- An official donation receipt was issued for \$350,000 (\$.35/share) for 1,000,000 [REDACTED] shares donated on December 23, 2010. The FMV of the shares at the time of the donation is estimated in the range of \$19,876 to \$48,688. We will use the midpoint of the range, that being \$34,300 (\$.034/share), which represents the FMV of the shares on December 23, 2010. This results in a decrease to the received value of \$315,700 (\$350,000 - \$34,300), which represents 90.2% of the face value.
- An official donation receipt was issued for \$743,850 (\$.55/share) for 1,352,456 [REDACTED] shares donated on March 28, 2011. The FMV of the shares at the time of the donation is estimated in the range of \$34,799 to \$85,857. We will use the midpoint of the range, that being \$60,300 (rounded) (\$.045/share), which represents the FMV of the

shares on March 28, 2011. This results in a decrease to the received value of \$683,550 (\$743,850 - \$60,300), which represents 91.9% of the face value.

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 an official donation receipt otherwise than in accordance with the Act and the Regulations or that contains false information. Issuing an official 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. It is our position that the Organization has issued official donation receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

The Organization's options:

a) Respond

If the Foundation 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 Foundation in the manner described in subsection 168(1) of the Act.

b) Do not respond

The Foundation 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 Foundation in the manner described in subsection 168(1) of the Act.

If the Foundation 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 team leader, Sherri Davis, may also be reached at 250-363-3128.

Yours sincerely,

John Dumalski, [REDACTED]
Audit Division
Vancouver Island and North Tax services Office

Telephone: (250) 363-6338
Facsimile: (250) 363-3000
Address: 9755 King George Blvd.
Surrey, BC
V3T 5E1

cc: Michael Aymong, [REDACTED]

August 10, 2019

John Dumalski,
Audit Division
Vancouver Island and North Tax Services Office

Dear Sir,

**RE: Audit of Brightline Foundation
BN 80617 6350 RR0001
File No: 3038576**

In your letter of May 16, 2019 you note an area potential of non-compliance with respect to issuing receipts not in accordance with the Act. You refer to 2 potential aspects of non-compliance:

- 1) Lack of Donative Intent; and.
- 2) Fair Market Value

It is the position of the charity that both aspects have been met and that the Charity is fully compliant and has issued only valid receipts in accordance with the Act.

The facts identified during the audit, as laid out by you on page 1 and 2 of the above referenced letter, are not in dispute.

1) Donative Intent

Based on the uncontested facts as presented, it is the contention of the Charity that the gift meets the requirements of *animus donandi*.

According to Coombs et al v The Queen, 2008 DTC 4004, there are 4 requisite elements:

- 1) Gifted Property be owned by the donor
- 2) Transfer be Voluntary
- 3) No consideration flow to the donor
- 4) Gift consists of Property

Prior to making the gift, Eve Aymong was the owner of the shares in question, and after the gift, Brightline Foundation was the owner of the shares.

The gift was entirely voluntary, and no evidence to the contrary has been suggested or provided, nor is any known by the Charity.

The only "consideration" received by the donor was a duly issued and compliant income tax donation receipt. The fact that a donation receipt was issued in respect of the transaction does not, in and of itself, negate the donative intention. To contend otherwise would be contrary to the entire Not for Profit sector.

It is clear that the donation meets the definition of property in the Act, and the fact is not in dispute.

2) Fair Market Value

The property in question was shares in [REDACTED] The only objective, arms length pricing available was the quoted price for the shares, as reflected on Google finance Canada. This was provided to you for your inspection. The Charity, taking all reasonable efforts to ascertain a Fair Market Value for the property donated, relied upon the quoted price.

You have advised that the Business Equity Valuation section of CRA has completed valuations of the enterprise in order to determine if the received value was reflective of the market value. You have not, at this time, shared any detail of those valuations, nor the methodology used, and so the Charity is in no position to accept the suggested share valuation. It is questionable whether this valuation took into consideration any non-financial data (prospects, relationships, LOI's, forecasts, positioning ahead of the market etc.) – all items that can add considerably to a shares market value, but not necessarily its BEV. Performing an historical business valuation brings many additional complexities and must exclude any subsequent events or biases. We have no knowledge of the steps taken to ensure a reliable, unbiased, complete, historical business valuation, and so reserve judgement on its conclusions.

Additionally, the notion that a Market Cap / quoted price is not reflective of the value of a portfolio investment is without merit. There are many factors why the share price might be higher than a BEV. By way of example, the current valuations of Canadian Cannabis stocks bear little relation to their BEV's. The market includes estimates of future performance or other non-financial matters in its estimate of share price.

Summary

It is the contention of the Charity that all donation receipts were issued in accordance with the Act, and that no compliance measures are warranted. The donations under review were truly donative in intent, and the Charity has taken reasonable steps to support the fair market value of the donation, in light of the fact that the Act does not require valuations to be performed.

That being said, it is now clear to the Directors of the Charity that it is the guidance and recommendation of the Canada Revenue Agency that any property donated in excess of \$10,000 be appraised by an independent third party. We are prepared to follow that advice in respect of all future non-monetary donations that we might receive, and will bring forward a policy to that effect at the next Directors meeting. We recognize that this affords protection to the donor as well as the Charity, and will ensure compliance into the future.

We trust that this matter might be concluded at this time, and thank you for the educational aspects of the audit process.

Yours very truly,

Mike Aymong, Director
Brightline Foundation

August 15, 2019

John Dumalski,
Audit Division
Vancouver Island and North Tax Services Office

Dear John,

**RE: Audit of Brightline Foundation
BN 80617 6350 RR0001
File No: 3038576**

I have been out of the office a great deal this summer including a prolonged period out of the country. Consequently, I did not see the letter from Mr. Aymong before it was sent to you.

I endorse what he has written but want to add certain comments which in some respects are potentially contradictory.

1) Donative Intent

Your letter dated May 16, 2019 cited the Tax Court of Canada *Webb v. The Queen* decision of 2004 on "donative intent" for the proposition that "the amount must be paid without benefit or consideration flowing back to the donor". You also cited *Coombs et al v The Queen*, 2008 DTC 4004, as basis for Canada Revenue Agency's legal position that "no consideration flow to the donor".

I find it interesting that your letter is silent on the fact that Parliament has, subsequent to those cases, specifically legislated a statutory interpretation of "Intention to give". Subsection 248(30) of the Income Tax Act states:

(30) The existence of an amount of an advantage in respect of a transfer of property does not in and by itself disqualify the transfer from being a gift to a qualified donee if

- o **(a) the amount of the advantage does not exceed 80% of the fair market value of the transferred property; or**
- o **(b) the transferor of the property establishes to the satisfaction of the Minister that the transfer was made with the intention to make a gift.**

I assume that CRA understands "the rule of law" requires that it give priority to statutory law over the common law. Would you please advise in writing as to whether CRA takes the position that Parliament authorizing the amount of the advantage to be up to 80% of the value of the transferred property does not contradict and overrule the common law with regard to "intention to give" set out in the 2 cases cited in your letter.

The donor Eve Aymong was a director and [REDACTED] another director, Mike Aymong, who then, and still today, had/has every confidence that the donor had an intention to give. It seems implausible that CRA, having never met the donor, is in a position to deny the existence of that intention. If the valuation method should have been other than the "over-the-counter" trading price, that does not vitiate the intention to donate.

You have cited *Coombs et al v The Queen*, 2008 DTC 4004 which sets out 4 criteria for there to be a gift at law. None of those 4 criteria have a scintilla of requirement that either the donor or the donee know the fair market value of the property donated. Indeed, property law would be thrown into complete confusion and disarray if the courts held that no transfer of property, such as a ring or a painting, was a gift at law unless both the donor and donee had an accurate and mutual understanding of the fair market value of the ring or painting.

Your letter relies upon paragraph 168(1)(d) as the basis for revocation. This provision explicitly says:

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

Please provide CRA's legal analysis as to how this statutory provision even applies to the transfers from Eve Aymong unless CRA first establishes that a gift had been made at law.

2) Fair Market Value

As Mr. Aymong pointed out, you have not shared any details of the Business Equity Valuation relied upon by CRA. Please provide us with the criteria and methodology used so that the Charity can determine whether it should take the position that the share valuation claimed in the receipt was in fact too low rather than too high.

Please advise in writing whether CRA will be prepared to accept the higher valuation if it is justified utilizing the Business Equity Valuation methodology relied upon by CRA. In decades of involvement with charitable foundations, when issuing an official donation receipt, I have never used a valuation other than the public trading value when dealing with public shares. There is no doubt that the Charity used the valuation it did on the official receipt on the basis that it understood that value to be the "fair market value" required in Regulation 3500.

Further, please advise us in writing as to whether your allegation as to a "lack of donative intention" will be satisfactorily addressed if the valuation on the official receipt proves to be too low rather than too high.

Summary

If CRA imposes the requirement that the Charity not issue official donation receipts without first applying the Business Equity Valuation methodology as a term of a compliance agreement in the future, I will agree to that requirement.

Yours very truly,

Blake Bromley, Director
Brightline Foundation