



July 14, 2022

REGISTERED MAIL

Nechemia Deitsch
Chair
Canadian Friends of Israel Youth Centre
1344 Bathurst Street
North York, ON M5R 3H7

BN: 857173231RR0001
File #: 3028678

Dear Nechemia Deitsch:

**Subject: Notice of intention to revoke
Canadian Friends of Israel Youth Centre**

We are writing with respect to our letter dated September 24, 2020, (copy enclosed), in which Canadian Friends of Israel Youth Centre (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2017 to December 31, 2018. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated October 19, 2020. It is our opinion that, notwithstanding your reply, the Organization failed to demonstrate that it had implemented all of the corrective measures included in the Compliance Agreement it signed with the CRA on February 28, 2011. Therefore, our concerns, as stated in our letter of October 18, 2017, regarding the Organization's non-compliance with the requirements of the Act for the registration as a charity, have not been alleviated. Our position is fully described in Appendix A, attached.

Conclusion

The current audit by the CRA found that the Organization has continued not complying with the requirements set out in the Act. Similar to the findings in the previous audit, we determined that the Organization has continuously failed to:

- devote resources to charitable activities carried on by the Organization itself by gifting resources to non-qualified donees;
- maintain adequate books and records; and
- issued receipts not in accordance with the Act and/or its Regulations.

Consequently, for the reasons mentioned in our letter dated September 24, 2020, and pursuant to subsection 168(1) and 149.1(2) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), 168(1)(e), 149.1(2)(c) 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
857173231RR0001

Name
Canadian Friends of Israel Youth Centre
North York, ON

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

Assistant Commissioner
Appeals Intake Centre
PO Box 2006 STN Main
Newmarket ON L3Y 0E9

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

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix 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 A. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at canada.ca/charities-giving;

- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,

Sharmila P. Khare

Sharmila Khare
Director General
Charities Directorate

Enclosures

- CRA letter dated September 24, 2020
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.: Mendel Bernstein
Andrew Wiess



September 24, 2020

REGISTERED MAIL

Mendel Bernstein


BN: 857173231RR0001

File #: 3028678

Dear Mendel Bernstein:

Subject: Audit of Canadian Friends of Israel Youth Centre

This letter results from the audit of the Canadian Friends of Israel Youth Centre (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2017 to December 31, 2018.

On December 13, 2019, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities carried on by the Organization itself: i. Lack of direction and control over the use of resources/resourcing non-qualified donees	149.1(2), 168(1)(b)
2.	Failure to maintain adequate books and records as required	149.1(2), 230 to 231.5, 168(1)(e), 188.2(2)(a)
3.	Issuing receipts not in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), 188.1(7) Regulation 3501

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

Alternatively, penalties and/or suspensions may be applicable pursuant to sections 188.1 and/or 188.2 of the Act. These include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". While the purpose of

a sanction is to provide an alternative to revocation, notice may still be given of our intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

Please note that we are not proposing penalties at this time, due to the serious nature of the non-compliance, it is our position that a notice of intention to revoke registration of the Organization's charitable status be issued.

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

General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.¹ To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity² and deliver a public benefit:

- relief of poverty (first category);
- advancement of education (second category);
- advancement of religion (third category); or
- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by the common understanding of

¹ See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" except to the extent that an activity falls within the specific exemptions of subsections 149.1(6.1) or (6.2) of the Act relating to political activities, and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at paras 155-159 [*Vancouver Society*]. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

² The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including "the disbursement of funds to qualified donees". The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) [*Pemsel*]. The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, supra note 4.

enlightened opinion for the time being.³ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.⁴ An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁵

- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
 - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or
 - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁶

As well, a charitable purpose⁷ should not be broad or vague. If the wording is too broad or vague, it will not be clear that a purpose is charitable (falls within a charitable purpose category and provides a public benefit) and defines the scope of the organization's activities. "Broad" means the purpose may allow for both charitable and non-charitable activities and/or the delivery of unacceptable private benefits. "Vague" means the wording may be interpreted in different ways. A purpose that is too broad or vague may not be eligible for registration⁸.

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

³ See generally *Vancouver Society*, supra note 4 at para 41, Gonthier J, dissenting; *Gilmour v Coats et al*, [1949] 1 All ER 848 [*Gilmour*]; *National Anti-Vivisection Society v IRC*, [1947] 2 All ER 217 at 224 (HL), Wright LJ [*National Anti-Vivisection Society*].

⁴ See for example *In re Grove-Grady*, [1929] 1 Ch 557 at 573-574; *Plowden v Lawrence*, [1929] 1 Ch 557 at 588, Russell LJ; *National Anti-Vivisection*, supra note 6 at 49, Wright LJ; *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539 [*Oldham*]; *Pensel*, supra note 5 at 583.

⁵ See *National Anti-Vivisection Society*, supra note 6 at 49, Wright LJ; *In re Shaw decd*, [1957] 1 WLR 729; *Gilmour*, supra note 6, Simonds LJ at 446-447.

⁶ For more information about public benefit, see CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

⁷ For more information about charitable purposes see CRA Guidance CG-019, *How to Draft Purposes for Charitable Registration*.

⁸ *Vancouver Society*, supra note 4 per Iacobucci J at para. 158; *Travel Just v. Canada Revenue Agency*, 2006 FCA 343, [2007] 1 C.T.C. 294.

- for gifting to “qualified donees” as defined in the Act.⁹

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.¹⁰

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,¹¹ and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

The CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization's operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.¹²

Background of the Organization

Canadian Friends of Israel Youth Centre became a registered charitable organization effective January 4, 2005, with the following purposes:

- a) To provide education, medication and clothing to poor children at Israel Youth Village in Kfar Chabad, Israel.

⁹ A “qualified donee” means a donee described in subsection 149.1(1) of the Act.

¹⁰ For more information, see CRA Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* and Guidance CG-004, *Using an Intermediary to Carry Out Activities Within Canada*.

¹¹ See notably *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, [2002] FCJ no 315 [*Canadian Committee for the Tel Aviv Foundation*].

¹² See for example *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 69, [2002] FCJ no 1260, Sharlow JA.

- b) To relieve poverty in Israel and Canada by providing education, medication, clothing and other basic supplies to persons in need, especially children in the Jewish community.

The activities at the time of registration were:

- a) Canadian Friends of Israel Youth Centre was founded to assist young children who attend Israel Youth Village in Kfar Chabad, Israel.
- b) The boys who are the age of 8-16 are from poor, underprivileged families. Besides funds for schooling, Israel Youth Village distributes money and or clothing to the children. The subjects taught at the school are not limited to: Bible, Mishna, Talmud, Prayer and Jewish Religious Laws. The school has a dormitory for the youngsters so that they do not have to travel home every day.
- c) Every applicant of his parent will complete an "assistance application". If the applicant meets the financial criteria, funds will be sent to Israel Youth Village on his behalf. Canadian Friends of Israel Youth Centre will not send the funds to the applicant. The organization wants to be certain that the funds are used for the applicant's schooling and welfare.
- d) Canadian Friends of Israel Youth Centre may appoint an Agent to handle its affairs in Israel. The agent is responsible to the Executive. All applications may be directed to the Agent.
- e) The Agent in turn will send all applications, after they have been reviewed by him to the assistance committee.
- f) The assistance committee may modify, increase, decrease, or reject any and all applications for assistance. The final word is with the assistance committee. The assistance committee may at their discretion, cancel the Agency Agreement or appoint another agent as they see fit.

The registration was based on the information supplied by the Organization and on the understanding that it would be carrying out the activities listed in its application.

Previous Audit History

A previous audit was conducted by the Canada Revenue Agency (CRA) for fiscal periods ending 2007 and 2008 resulting in a compliance agreement signed by Nechemia Deitsch, a director of the Organization, on February 28, 2011. At the conclusion of that audit, the Organization agreed to implement the corrective measures detailed below, on or before March 31, 2011, to address the non-compliance issues found during the audit.

1. Direction and control over the use of the Organization's resources

It was found that the Organization had a signed agency agreement but did not implement it. The corrective measures included ensuring the Organization exercised adequate direction and control over its resources and over the conduct of its charitable activities by implementing all terms contained in the agency agreement. This included having the agent safeguard all funds entrusted to him and to provide all necessary documentation to

account for all charitable activities conducted on behalf of the Organization. In addition, the Organization agreed to maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada. The Organization agreed to retain, and make available to the CRA upon request, books and records to substantiate compliance. The Organization was to enter into a structured arrangement with an intermediary to carry out its charitable activities and/or programs. Lastly, the Organization agreed that it would demonstrate, at all times, that each activity furthered one of its charitable purposes, and that the terms of all structured arrangements were put into practice and adhered to.

2. Failure to maintain adequate books and records

The Organization failed to support how disbursements to charitable organizations in Israel furthered its own charitable programs. As a corrective measure, the agent was to provide a duplicate set of books and records maintained with respect to the activities carried out on behalf of the Organization. The Organization failed to maintain supporting documentation of a loan arrangement it entered into with an individual. There was also no supporting documentation to support travel expenses incurred during the audit period. To correct these issues the Organization agreed to maintain documentation for any loans made relating to its charitable activities and a log detailing travel expenses incurred.

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

Errors and omissions were found on the 2008 T3010 Charity Information Return. The Organization agreed to file an amended T3010 Charity Information Return for the 2008 year end.

4. Issuing receipts not in accordance with the Act

Official donation receipts were issued without the name and website address of the Canada Revenue Agency, official donation receipts were not issued in numerical sequence because the receipts were issued from the same system used by [REDACTED] an associated organization, and donation receipts were issued for gifts from other charitable organizations. The Organization agreed to correct the issues by including the name and website address of the Canada Revenue Agency on the official donation receipts and ensure that the donation receipt numbers were issued in numerical sequence.

Current Audit

The purpose of the current audit was to follow up on the compliance agreement signed by a director of the Organization on February 28, 2011.

The current audit revealed that the Organization did not enter into any loan arrangements, kept the required documentation to support travel expenses during the audit period as

agreed to, and filed an amended T3010 Charity Information Return for the year ending 2008 to address the errors found in the previous audit.

However, the current audit revealed that the Organization continued to issue official donation receipts without the name and website address of the Canada Revenue Agency and the official donation receipts were not issued in numerical sequence. The Organization was also unable to demonstrate that it maintained direction and control of the activities outside Canada and show how it furthered its own charitable purposes.

Each area of non-compliance is detailed below in the audit findings. Due to the Organizations repeated non-compliance, it is our view there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

Identified areas of non-compliance

1. Failure to devote resources to charitable activities carried on by the Organization itself.

- i. Lack of direction and control over the use of resources/resourcing non-qualified donees

Legislation

Subsection 149.1(1) of the Act defines a charitable organization, which reads in part as:

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

- (a) all the resources of which are devoted to charitable activities carried on by the organization itself [...]

Accordingly, a charitable organization must be careful about how it carries on its activities and it must ensure that it keeps sufficient direction and control over its resources, or it could possibly be transferring money to non-qualified donees, which is not a charitable activity.

Though made in reference to an agency relationship, the underlying principles enunciated by the Federal Court of Appeal in *Canadian Committee for the Tel Aviv Foundation v Canada* are applicable to most intermediary arrangements:

Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations Overseas.

And

Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities.

As re-iterated by the Court in *Lepletot v MNR*, an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.

Consequently, where a registered charity undertakes an activity through an intermediary, it must be able to substantiate that it has actually arranged for the conduct of that specific activity on its behalf and has not simply made a transfer of funds to a non-qualified donee. It must be able to demonstrate that it maintains direction and control over, and is fully accountable for, the use of its resources. To this end, a charity would be expected to:

- select the activity that it will conduct with or through an intermediary based on the fact that it will further the charity's charitable purposes, and after being satisfied that the intermediary is capable of conducting the activity on the charity's behalf; and
- supervise/direct, and make significant decisions in regard to the conduct of, the activity on an ongoing basis.

To this end, the Organization is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Organization must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary, and are actually implemented. For instance, the documentation should include:

- a clear, complete, and detailed description of the activity that is to be conducted, how it furthers the charitable purposes of the Organization and how it is to be carried out by the project participant on the Organization's behalf, including parameters, deliverables, milestones or goals;

- provision for real and effective monitoring and supervision of the activity, and the project participant carrying on the activity, with mechanisms for someone accountable to the Organization to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis; and
- a requirement for the Organization to receive regular, meaningful reports as the activity progresses. To be meaningful, reporting requirements must specify issues to be covered, and when they must be submitted, to ensure the Organization has the opportunity to make significant decisions in regard to the conduct of the activity on a timely and ongoing basis.

Audit Findings

Given the information reviewed during the audit, it is our position that the Organization did not exercise the required degree of direction and control over the use of its funds, or over the activities conducted with those funds, to establish that it was carrying out its own charitable activities in accordance with the provisions of the Act.

During the audit period, there was an agency agreement in place between Canadian Friends of Israel (the Charity) and Mr. George Edelkopf (Representative). As stated in the agency agreement, "the Charity desires to provide assistance to poor children in Israel by providing them with schooling and other assistance at Israel Youth Centre in Kfar Chabad, Israel. The Charity desires to have Mr. George Edelkopf assist in carrying out its activities in Israel."

The Organization wire transferred funds to the bank account in Israel, where the agent, Mr. Edelkopf, withdrew and disbursed the funds. As stated in the agency agreement, the funds were to be used to pay assistance directly to Israel Youth Centre in Kfar Chabad, Israel on behalf of assistance applications that have been approved by the assistance committee.

A review of the summary of transactions provided to the Organization by Mr. Edelkopf, revealed that funds were disbursed to other organizations in addition to the Israel Youth Centre, in which there was no agency agreement in place with those other organizations. The summary of transactions were maintained in Israeli New Shekel (NIS), the auditor converted the amounts to Canadian dollars (CAD) and verified the amounts to the expenses recorded by the Organization on the T3010 Charity Information Return during the audit period. No other information or documentation accompanied the summary of transactions.

According to the summary of transactions provided for 2017, total disbursements made by Mr. Edelkopf on behalf of the Organization totalled \$430,360 (NIS) equivalent to \$163,446 (CAD), of this amount, no disbursements were documented on the transaction sheet as being directed to Israel Youth Centre. The total \$430,360 (NIS) (\$163,446 CAD)

was directed to other organizations with which the organization had no agency agreements in place.

In 2018, \$157,000 (NIS) (\$60,207 (CAD) was disbursed by Mr. Edelkopf on behalf of the Organization, of this amount, \$18,000 (NIS) (\$6,903 (CAD) was documented on the transaction sheet as being directed to Israel Youth Centre. The remaining \$139,000 (NIS) (\$53,304 (CAD) was disbursed to other organizations with no agency agreement in place throughout the audit period.

See "Appendix A" for the Summary of Transactions provided by the Organization during the audit.

On December 13, 2019, a query letter was mailed to the Organization requesting that the Organization provide copies of all assistance applications, source documents used to grant assistance to poor children, detailed expenditures, records of all transactions and detailed annual financial reports, and records maintained with respect to the activities carried out by the Organization for review, as these were the written terms of the agency agreement between the Organization and Mr. Edelkopf. The Organization did not provide any such documentation and Mr. Deitsch, the director, responded to the auditor's request by stating that all agreements were completed verbally, on an individual trust basis with the agent, Mr. Edelkopf. The Organization's response stated that it was Mr. Edelkopf that determined the needs for each individual and each charity. The Organization further stated, as instructed by the agent George Edelkopf, they sent the money to Mr. Edelkopf in Israel, who then distributed the money either directly to the poor person or to an affiliate organization that dealt directly with poor people whom distributed the funds to the under privileged for food and clothing as well as for camp activities. There was no source documentation provided during the audit to support or show how the organizations or individuals were selected for funding, how much to send to each organization or how the funds were used outside of Canada to further the Organization's charitable purposes.

Although the Organization maintained minutes as part of the books and records and provided the meeting minutes to the auditor for review, the minutes were blank templates that were not completed. The minutes did not include any details of any discussions of the board of directors related to the activities of the Organization.

Summary

Given the absence of supporting documentation, the Organization has not established that it had direction and control over its resources during the audit period. As a result, it is our position that the Organization did not devote its resources to charitable activities carried out by the Organization itself, based on its inability to provide source documentation to support the expenditures and demonstrate that it had any direction and control over the activities outside of Canada. The organization was found to be resourcing non-qualified donees.

Further, this was an area of non-compliance identified during the previous audit and the organization failed to implement the required corrective measures. For these reasons, and for each of these reasons alone, it appears to us that there may be grounds for revocation of the charitable status of the Organization pursuant to paragraph 168(1)(b) of the Act.

2. Failure to maintain adequate books and records as required

Legislation

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

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

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

- a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such a period as is prescribed;
- b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate."

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:

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;¹³
- ii. a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;¹⁴ and

¹³ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

¹⁴ Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, *failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.*

- iii. the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.¹⁵

Audit Findings

The audit revealed the Organization failed to maintain adequate books and records and therefore contravened sections 230 to 231.5 of the Act. The following deficiencies were found in the books and records:

Financial Statements and Reports

The Organization had no financial statements or reports from its intermediary to support the disbursement of funds outside of Canada. During the audit period, the only documentation provided was a list of wire transfers sent outside Canada for each year under audit. The bank records revealed that the Organization sent wire transfers to the bank account in Israel, where the agent, Mr. Edelkopf, withdrew and disbursed the funds as listed out in the summary of transactions list provided by the organization. We were unable to verify the funds furthered the Organization's own charitable purposes, or that the Organization maintained ongoing direction and control over the funds transferred to the agent, and over the activities conducted by the agent because there was no documentation, reconciliations or detailed reports showing how the funds were spent, how the beneficiaries were selected or that the funds were distributed to the underprivileged in accordance with the organization's registered objects.

Donation Receipt Books

During the audit period, the Organization issued computer generated donation receipts from the same system used by [REDACTED] an associated organization, which resulted in a gap in numerical sequence when the Organization issued official donation receipts. In addition to the computer generated receipt number an examination of the donation receipts revealed a manual numerical stamp in the top right hand corner. For example, in 2018, the first donation receipt #11294 was stamped "1-2018", the second receipt #11386 was stamped "2-2018, and the third receipt #11857 was stamped "3-2018". When questioned about the manual stamped number, Mr. Deitsch stated it was the donation receipt number. This statement contradicted the fact that the system generated receipt number was present on the donor listing and the official donation receipt and the manual stamped number was not on the donor listing. It is unknown if the official donation receipts issued to recipients contained the additional manual stamped number or if the stamp was only present on the copies of the donation receipts kept by the Organization. As a result of the gaps in numbering it was not possible to verify the receipted donations of the Organization or to verify all the receipts that were issued.

¹⁵ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

Meeting Minutes

Meeting minutes were reviewed during the audit and revealed that the Organization did not maintain adequate minutes to support any discussions or decision making of the Organization. The minutes provided for the audit period were blank templates with no documentation to verify that charitable activities took place, who or how the beneficiaries were selected, or how much funding would be sent. The Organization did not maintain discussions or records of budgets or review expenditures of the funds sent outside Canada. The Organization was unable to show how this furthered their charitable purpose.

Summary

Under paragraph 188.2(2)(a), an Organization may receive a notice of suspension of delivering official receipts if it contravenes subsection 230(2). It is our position the Organization has failed to comply with the Act by failing to maintain adequate books and records. For this reason, there may be grounds to suspend the Organization's authority to issue official receipts under paragraph 188.2(2)(a) of the Act. However at this time, penalties are not being proposed.

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. Inadequate books and records was an area of non-compliance identified during the previous audit and the organization failed to implement the required corrective measures. It is our position that the present case consists of material and repeated non-compliance. For these reasons and for each of these reasons alone 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.

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

Legislation

Paragraph 230(2)(b) of the Act provides that every registered charity shall "keep records and books of account [...] at an address in Canada recorded with the Minister [...] [including] a duplicate¹⁶ of each receipt containing prescribed information for a donation received by it".

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

¹⁶ The definitions found in general language dictionaries and in law dictionaries are sufficiently broad to include a "duplicate of a receipt" in almost any form.

Subsection 3501(3) of the Regulations provides that official donation receipts can bear a facsimile signature under the following conditions, "(a) distinctively imprinted with the name, address in Canada and registration number of the organization, (b) serially numbered by a printing press or numbering machine, and (c) kept at the place referred to in subsection 230(2) of the Act until completed as an official receipt."

Audit Findings

The audit revealed that all of the receipts issued by the Organization during the audit period did not contain the name and website address of the Canada Revenue Agency as required under subsection 3501(1) of the Regulations.

Summary

In summary, it is our position that the Organization did not issue receipts according to the Act and its Regulations. The audit revealed the Organization issued official donation receipts that did not contain all the required elements. All the official donation receipts issued did not include the name and website address of the Canada Revenue Agency. Accordingly, it is our position that the Organization failed to meet the requirements of sections 3501 of the Regulations ensuring all the required information was present on each official donation receipt issued for income tax purposes. Further, this was an area of non-compliance identified during the previous audit and the organization failed to implement the required corrective measures. It is our position that the present case consists of material and repeated non-compliance.

Subsection 188.1(7) of the Act states a registered charity that issues, in a taxation year, a receipt for a gift otherwise than in accordance with this Act and the regulations is liable for the taxation year to a penalty equal to 5% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3). Please note penalties are not being proposed at this time.

It is our position that the Organization failed to issue receipts according to the Act and its Regulations as outlined above. Accordingly, it is our position that the Organization has failed to meet the requirements related to issuing receipts only when allowed and ensuring all the required information is present. For these reasons, and each of these reasons alone, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

The Organization's options:

a) Respond

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

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

b) Do not respond

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

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

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Maria Grieco, may also be reached at 905-706-7804.

Yours sincerely,



Shelly Martel
Audit Division
Kitchener/Waterloo Tax Service Office

Telephone: 519-577-2465
Facsimile: 519-585-2803
Address: 166 Frederick Street
Kitchener, ON N2H 0A9

c.c.: Nechemia Deitsch,
Andrew Wiess,



Canadian Friends of Israel Youth Centre

Comments on Representations

The audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2017 to December 31, 2018, revealed that Canadian Friends of Israel Youth Centre (the Organization) was not operating in compliance with the provisions of the Income Tax Act (Act). In our letter of September 24, 2020, the CRA provided the Organization the opportunity to demonstrate why its charitable registration should not be revoked by responding to our concerns in the following areas:

- Failure to devote its resources to charitable activities carried on by the Organization itself
 - Lack of direction and control over the use of resources in Israel.
- Failure to maintain adequate books and records as required
 - Financial statements and reports had omissions
 - Donation receipt books
 - Meeting minutes incomplete
- Issuing receipts not in accordance with the Act and/or its Regulations
 - Receipts did not contain the CRA name and website address
 - Receipts were not in numerical order

We have reviewed and considered the Organization's representations of October 19, 2020. However, our concerns with respect to the areas of non-compliance stated above were not alleviated. As such, we maintain our position, articulated in our letter of September 24, 2020, that the Organization's registration should be revoked.

The basis for our position is described below, including our responses to the Organization's representations.

Repeated non-compliance

This is the Organization's second audit, which was conducted to follow-up and ensure that the Organization implemented to terms of the Compliance Agreement (CA) that resulted from the previous audit. During the previous audit, the CRA provided the Organization with the opportunity to correct the identified areas of non-compliance by entering into a CA with the CRA. In the CA, which was signed on February 28, 2011, the Organization had agreed to implement the corrective measures set out therein on or before March 31, 2011. The current audit found the same or similar issues of non-compliance as in the previous audit. Furthermore, the current audit has demonstrated that the Organization has not implemented all the necessary and agreed upon corrective measures and continues to be non-compliant.

The findings of both audits have demonstrated a pattern of non-compliance, in which the Organization has continually gifted funds to a non-qualified donee, made errors/omission on its form T3010, Registered Charity Information Return (T3010), and failed to issue official donation

receipts in accordance with the Act and/or its Regulations. Its continued contravention of the rules and regulations of the Act constitute grounds for the revocation of its charitable status.

Previous Audit History

A previous audit was conducted by the CRA for fiscal periods ending (FPE) December 31, 2007, and December 31, 2008. The audit resulted in a compliance agreement signed by Nechemia Deitsch, a director of the Organization, on February 28, 2011. The Organization agreed to implement the following corrective measures to address the non-compliance issues:

1. Direction and control over the use of the Organization's resources

It was determined that the Organization had a signed agency agreement but failed to implement the terms contained within. The Organization agreed to exercise direction and control over its resources by implementing all terms contained in the agency agreement. This included having the agent safeguard all funds entrusted to him and to provide all necessary documentation to account for all charitable activities conducted on behalf of the Organization. The Organization agreed to retain, and make available to the CRA upon request, books and records to substantiate compliance. The Organization was to enter into a structured arrangement with an intermediary to carry out its charitable activities and/or programs. Lastly, the Organization agreed that it would demonstrate, at all times, that each activity furthered one of its charitable purposes, and that the terms of all structured arrangements were put into practice and adhered to.

2. Failure to maintain adequate books and records

The Organization failed to support how disbursements to charitable organizations in Israel furthered its own charitable programs. As a corrective measure, the agent was to provide a copy of the books and records maintained in Israel with respect to the activities carried out on behalf of the Organization. The Organization failed to maintain supporting documentation of a loan arrangement it entered into with an individual. There was also no supporting documentation to support travel expenses incurred during the audit period. To correct these issues the Organization agreed to maintain documentation, such as loan agreements, for any loans made relating to its charitable activities. Additionally, the Organization agreed to maintain a log detailing all travel expenses incurred and these expenses were to be supported by receipts or travel tickets.

3. Errors and omissions on form T3010, Registered Charity Information Returns

Errors and omissions were found on the 2008 T3010. The Organization agreed to file an amended T3010 for the FPE 2008.

4. Issuing receipts not in accordance with the Act

The Organization's Official donation receipts (ODR) did not contain the name and website address of the CRA, were not in numerical sequence and were issued from the same computer used by an associated for profit organization. ODRs were also issued for gifts received from other charitable organizations. The Organization agreed to include the name and website address of the CRA on its ODR, issue numerically sequenced ODR, and no longer issue ODR to other registered charities.

Current Audit

The purpose of the current audit was to follow up on the compliance agreement signed by the director of the Organization on February 28, 2011, and establish whether the corrective measures were implemented.

The current audit revealed that the Organization did not enter into any new agreements, kept the required documentation to support travel expenses during the audit period, and filed an amended T3010 for the year ending in 2008 to address the deficiencies found in the previous audit.

However, the current audit also revealed the Organization was unable to demonstrate that it maintained direction and control over the activities outside Canada and show how these activities furthered its own charitable purposes. Additionally, the Organization continued to issue official donation receipts which neither contained the name and website address of the Canada Revenue Agency, nor were in numerical sequence.

Identified areas of non-compliance in the current audit

1. Failure to devote resources to charitable activities carried on by the Organization itself

i. Lack of direction and control over the use of resources

Given the information reviewed during the audit, it is our position that the Organization did not exercise the required degree of direction and control over the use of its funds, or over the activities conducted with those funds, to establish that it was carrying out its own charitable activities in accordance with the provisions of the Act.

During the audit period, there was an agency agreement in place between the Organization and George Edelkopf (the Agent). As stated in the agency agreement: the Organization provided assistance to poor children in Israel by providing them with schooling and other assistance at Israel Youth Centre in Kfar Chabad, Israel.

The Organization wire-transferred funds to the bank account in Israel, where the agent withdrew and disbursed the funds. As stated in the agency agreement, the funds were to be used to pay for schooling and other assistance and be paid directly to Israel Youth Centre in Kfar Chabad, Israel in connection with the assistance applications, which were reviewed and approved by an assistance committee.

A review of the summary of transactions provided to the Organization by the agent revealed that funds were disbursed to other organizations in addition to the Israel Youth Centre in Kfar Chabad, but there was no agency agreement in place with those other organizations. The summary of transactions were maintained in the local currency - Israeli New Shekel (NIS). The auditor converted the amounts to Canadian currency (CAD) and verified the amounts to the expenses recorded by the Organization on the T3010 during the audit period. No other information or supporting documentation accompanied the summary of transactions.

According to the summary of transactions provided for FPE 2017, total disbursements made by the agent on behalf of the Organization totalled \$430,360 (NIS) which is equivalent to \$163,446 (CAD), of this amount, no disbursements were documented on the transaction sheet as being paid

or directed to Israel Youth Centre. These payments were directed to other organizations with which the Organization had no agency agreements in place.

In FPE 2018, \$157,000 (NIS) / \$60,207 (CAD) was disbursed by the agent on behalf of the Organization, of this amount, \$18,000 (NIS) / \$6,903 (CAD) was documented on the transaction sheet as being directed to Israel Youth Centre. The remaining \$139,000 (NIS) / \$53,304 (CAD) was disbursed to other organizations with no agency agreement in place throughout the audit period.

On December 13, 2019, a query letter was mailed to the Organization requesting that they provide copies of all assistance applications, supporting documents used to grant assistance to poor children, detailed expenditures, records of all transactions and detailed annual financial reports, and records maintained with respect to the activities carried out by the Organization for review, as these were the written terms of the agency agreement between the Organization and the agent.

The Organization did not provide any such documentation as requested and Nechemia Deitsch, the director, responded to the auditor's request by stating that all agreements were completed verbally with the agent. In the Organization's response to our query letter, it stated that it was the agent who determined the needs for each individual and each foreign entity. The Organization further stated, as instructed by the agent, they sent the money to the agent in Israel, who then distributed the money either directly to the poor person or to an affiliate organization that dealt directly with poor people. The funds were distributed to the underprivileged for food, clothing, as well as for camp activities. There was no source documentation provided during the audit to support or show how the organizations or individuals were selected for funding, how much was disbursed to each organization or how the funds were used outside of Canada to further the Organization's charitable purposes.

Although the Organization claimed that it maintained minutes as part of the books and records and provided the meeting minutes book to the auditor for review, the pages were blank templates that were not completed. The minutes did not include any details of any discussions of the board of directors related to the activities of the Organization.

Summary

Given the absence of supporting documentation, such as copies of agency agreements with the other entities that funds were disbursed to, source documents, copies of the applications, and detailed meeting minutes, the Organization has not established that it implemented the terms set out in the agency agreement or that it maintained actual direction and control over its resources during the audit period. As a result, it is our position that the Organization did not devote its resources to charitable activities carried out by the Organization itself. It was determined that the Organization was providing its resources to non-qualified donees in Israel.

As stated above, this was also an area of non-compliance identified during the previous audit and the Organization failed to implement the required and agreed upon corrective measures. For these reasons, and for each of these reasons alone, it appears that there are grounds for revocation of the charitable status of the Organization pursuant to paragraph 168(1)(b) of the Act.

Organization's Response

The Organization responded to the CRA's letter on October 19, 2020. It stated that when they received a request for funding, the board members would identify the necessity and vote on whether the funds should be sent directly to a specific individual or to the Israel Youth Village, and then distribute the funds to the individual. The Organization further stated that after giving approval to the agent, the agent would then distribute the funds accordingly.

CRA's Response

The Organization's response lacked details on how it planned to address the areas of non-compliance relating to the lack of direction and control over the use of its resources.

The Organization did not provide any documentation in response to our request to demonstrate that it implemented the terms set out in its agency agreement or that applications for assistance were completed and approved by the assistance committee.

The Organization explicitly stated in the compliance agreement that it would ensure to exercise adequate direction and control over its resources and over the conduct of its charitable activities by implementing all of the terms contained in the agency agreement. It was further stated that the agent would safeguard all funds entrusted to him and provide all of the necessary documentation and reporting to account for all of the charitable activities conducted on behalf of the Organization.

Furthermore, on December 13, 2019, a request was sent by the CRA asking the Organization to provide supporting documentation including detailed expenditures, records of transactions, and detailed annual financial reports. A response from the Organization was received by the CRA on January 9, 2020, with no supporting documentation provided. In the absence of the Organization providing supporting documentation or information regarding its financial assistance program, we are unable to determine if this program advances any charitable purpose of the Organization.

The Organization stated in the previous compliance agreement that they would have an assistance committee that would review all assistance applications and that this committee would have final approval on all applications, including the authority to modify, reject, and increase or decrease the amount of funds indicated in an application. Despite their assertion to do so, the Organization failed to establish an assistance committee and also failed to provide these assistance applications to the CRA as requested.

In response to the CRA query letter mailed on December 13, 2019, requesting copies of the assistance applications, the Organization's response received by CRA on January 9, 2020, stated that all agreements were completed verbally, on an individual basis with agent, and further stated that it was in fact the agent who determined the needs for each individual and each charity. This individual should not be the one determining the needs of individuals and charities. It is the responsibility of the Organization's board of directors to vote and approve all matters relating to the applications for assistance. As such, the Organization's response did not sufficiently address this specific concern.

2. Failure to maintain adequate books and records as required

The audit revealed the Organization failed to maintain adequate books and records and therefore contravened sections 230 to 231.5 of the Act. The following deficiencies were found in the books and records:

a. Financial statements and reports

The Organization had no financial statements or reports from its intermediary to support the disbursement of funds outside of Canada. During the audit period, the only documentation provided was a list of wire transfers sent outside Canada for each year under audit. The bank records revealed that the Organization sent wire transfers to the bank account in Israel, where the agent withdrew and disbursed the funds as listed in the summary of transactions document provided by the Organization.

We were unable to verify if the funds furthered the Organization's own charitable purposes, or that the Organization maintained ongoing direction and control over the funds transferred to the agent because there were no supporting documentation, reconciliations or detailed reports showing how the funds were spent. Furthermore, there was no documentation showing how the beneficiaries were selected or documentation demonstrating the Organization's involvement in the selection of beneficiaries.

b. Donation receipt books

During the audit period, the Organization issued computer generated donation receipts from the same system used by [REDACTED] an associated organization, which resulted in a gap in numerical sequence when the Organization issued official donation receipts.

In addition to the computer generated receipt number an examination of the donation receipts revealed a manual numerical stamp in the top right hand corner. For example, in the FPE 2018, the first donation receipt #11294 was stamped "1-2018", the second receipt #11386 was stamped "2-2018", and the third receipt #11857 was stamped "3-2018". When questioned about the manual stamped number, the director stated it was the donation receipt number. This statement contradicted the fact that the system generated receipt number was present on the donor listing and the official donation receipt and the manual stamped number were not included on the donor listing. It is unknown if the official donation receipts issued to recipients contained the additional manual stamped number or if the stamp was only present on the copies of the donation receipts kept by the Organization. As a result of the gaps in numbering it was not possible to verify the receipted donations of the Organization or to verify all the receipts that were issued due to the gap in the numerical order.

c. Meeting minutes

Meeting minutes were reviewed during the audit and revealed that the Organization did not maintain adequate minutes to support any discussions or decision-making of the Organization.

The minute book provided by the Organization for the audit period under review were blank pages with no documentation to verify that charitable activities took place, who or how the

beneficiaries were selected, or how much funding was disbursed. The Organization did not maintain any discussions or records of budgets or review expenditures of the funds sent outside Canada.

Summary

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. Inadequate books and records was an area of non-compliance identified during the previous audit and the organization failed to implement the required corrective measures, thereby continuing to be non-compliant in this respect. It is our position that the present case consists of material and repeated non-compliance. For these reasons and for each of these reasons alone it appears that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

Organization's Response

In its October 19, 2020, response, the Organization indicated that they were under the impression that the documents provided were sufficient. The Organization's response further stated that their commitment for the future included hiring an independent auditing firm to overlook and ensure the above concerns are met.

CRA's Response

The Organization's response did not include any documentation or information to substantiate the inadequacies found in the books and records. Furthermore, it did not provide any documentation or information with respect to the details of its arrangement with the independent auditing firm it had committed to hiring. Therefore, the Organization has not demonstrated how it plans to ensure the accuracy and completeness of its books and records going forward. As such, the Organization's response did not alleviate our concerns regarding the books and records.

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

The audit revealed that none of the receipts issued by the Organization during the audit period contained the name and website address of the Canada Revenue Agency as required under subsection 3501(1) of the Regulations.

Summary

In summary, it is our position that the Organization did not issue receipts according to the Act and its Regulations as the audit revealed the Organization issued official donation receipts that did not contain all the required elements.

All of the official donation receipts issued by the Organization failed to include the name and website address of the Canada Revenue Agency. Accordingly, it is our position that the Organization failed to meet the requirements of section 3501 of the Regulations ensuring all the required information was present on each official donation receipt issued for income tax purposes. Further, this was an area of non-compliance identified during the previous audit and the

organization failed to implement the required corrective measures. It is our position that the present case consists of material and repeated non-compliance.

It is our position that the Organization failed to issue receipts according to the Act and its Regulations as outlined above. For this reason, it appears there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

Organization's Response

In the letter dated October 19, 2020, the Organization stated that not including the name and website address of the Canada Revenue Agency on its official donation receipts was an oversight. Furthermore, it stated that in order to save funds, they issued official donation receipts using the same computer system as [REDACTED] an associated organization. The Organization used a rubber stamp on the receipts to manually track the receipts in numerical order.

CRA's Response

The Organization's response did not outline the specific steps it planned to take to address the repeated non-compliance issues involving its official donation receipts. The same issues of non-compliance were also found in the previous audit of the Organization in which a compliance agreement was signed and the Organization agreed to address them, but has failed to do so. As such, the Organization's response did not alleviate our concerns regarding its official donation receipts.

Conclusion

Based on the Organization's representations, we recommend that the registration of the Organization be revoked for its continued inability to comply with the requirements of the Act.

In the prior audit, the Organization agreed, by signing the Compliance Agreement, that it would rectify the 4 non-compliance issues that were identified. However, only 1 out of the 4 non-compliance issues were identified (past errors in the T3010 were not repeated during the current audit).

The Organization has demonstrated an ongoing lack of compliance with multiple requirements of the Act, despite its previous assurances to remedy these issues.

As such, it is our opinion that the Organization's registered status as a charity should be revoked under the provisions of section 168 of the Act.

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.