



REGISTERED MAIL

Colel Chabad Lubavitch Foundation of Israel
4770 Kent Avenue Suite 302
Montréal QC H3W 1H2

DEC 19 2016

BN: 13836 9921RR0001

Attention: Mr. Zalman Zirkind

File #:0968917

**Subject: Notice of Intention to Revoke
Colel Chabad Lubavitch Foundation of Israel**

Dear Sir:

We are writing further to our letters dated November 26, 2013 and January 5, 2016 (copies enclosed), in which you were invited to submit representations as to why the registration of Colel Chabad Lubavitch Foundation of Israel (the Organization) should not be revoked in accordance with subsection 168(1) of the Income Tax Act (the Act).

We have now reviewed and considered your written responses dated February 24, 2014, July 11, 2014 and May 6, 2016. However, notwithstanding your replies, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization is not complying with the requirements set out in the Income Tax Act. In particular, it was found that the Organization failed to issue receipts in accordance with the Act by issuing official donation receipts where a partial gift was made; failed to meet the requirement for registration by not devoting all of its resources to its own charitable activities, notably by gifting funds to non-qualified donees; failed to maintain adequate books and records; failed to file an accurate information return as required by the Act; has no active board of directors and misrepresented its fundraising solicitations. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letters dated November 26, 2013 and January 5, 2016, we wish to advise you that, pursuant to subsection 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e), subsection 149.1(2) and paragraph 149.1(2)(c) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business number	Name
138369921RR0001	Colel Chabad Lubavitch Foundation of Israel Montréal QC

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written notice of objection, which includes 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:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

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. The Organization's registration will be revoked on the date of publication, unless the CRA receives an objection to this notice of intention to revoke within this timeframe.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent 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), or 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 prescribed Form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "B". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;
- 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 organizations other than charities. If you have any questions about your Goods and Services Tax (GST) obligations and entitlements, please call GST Rulings at 1-888-830-7747 (Quebec).

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

Yours sincerely,



Tony Manconi
Director General
Charities Directorate

Attachments:

- CRA letters dated November 26, 2013 and January 5, 2016
- Organization letters dated February 24, 2014, July 11, 2014 and May 6, 2016
- Appendix "A", Comments on Representations
- Appendix "B", Relevant provisions of the Act



REGISTERED MAIL

Colel Chabad Lubavitz Foundation of Israel
4770 Kent Avenue Suite 302
Montréal (Québec)
H3W 1H2

BN:138369921RR0001

Attention: Mr. Zalman Zirkind

File #:09689 17

November 26, 2013

Subject: Audit of Colel Chabad Lubavitz Foundation of Israel

Dear Sir:

This letter is further to the audit of the books and records of the Colel Chabad Lubavitz Foundation of Israël (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2008 to December 31, 2009.

The Organization was previously audited for the fiscal period January 1, 2003 to December 31, 2004. At that time, the CRA observed issues of non-compliance as detailed in our letter of October 16, 2006 (copy attached). The Organization signed a compliance agreement with the CRA dated on June 5, 2007 (copy attached). As such, according to the compliance agreement, the Organization agreed to make the following necessary changes and/or corrections:

1. Colel Chabad will not be undertaking activities in contravention with its objects. Colel Chabad made a request to modify its objects. Colel Chabad understands that the new objects and activities must be approved by the Charities Directorate. If the Charities Directorate does not approve an object or an activity, Colel Chabad will not pursue it.

Colel Chabad will not give any money to the needy people until their objects and activities have been modified.

2. Colel Chabad undertakes in the future to send all scholarships (and other assistance if this activity is approved by the Charities Directorate) directly to the

student. Colel Chabad will keep the original of the cheques and/or bank draft issued to the student.

a) Colel Chabad will keep the following documentation for the scholarship program:

- A record of the names and addresses of students receiving scholarships;
- The name and address of the school;
- Original of cancelled cheques or/and bank drafts sent overseas for the scholarship;
- A list of the criteria for the scholarship application; (a copy of the scholarship application and the list of the criteria in English or in French are attached.)
- A file for each student receiving scholarships including the following information:
 - o The student's application form for the scholarship;
 - o The application form signed by your agent outside Canada;
 - o The document supporting the registration/acceptance by the school of the student for full time studies for a period to come;
 - o The identity of the student;
 - o The academic transcript which was used to allow the scholarship;
 - o A copy of a statement which proves that the student paid his tuitions fees;
 - o An academic transcript (report card) for each semester attended by the student that the scholarship covers.
- A letter from the agent specifying the student's name to issue the cheque to and procedures regarding the scholarship grant by Colel Chabad if the student does not study at the school. Actions should be taken to collect the scholarship funds as soon as Colel Chabad becomes aware that the student is not attending the Institution (a copy of the procedures is attached)

b) Colel Chabad will not gift funds to non-qualified donees.

c) Minutes and inspection reports will be prepared to show the amounts approved and sent to Israel for all projects. Policies and procedures will be kept for all projects.

d) Policies and procedures will be kept.

- e) Colel Chabad agent in Israel will prepare a year-end financial report to show where and how the money received has been spent.
3. Colel Chabad had signed the T1240 form asked with the letter of the CRA on October 16, 2006.
4. Colel Chabad will not lend money to needy people unless and until their objects and activities permit this activity.
5.
 - a) [REDACTED] Zirkind will not take any monthly allowances of \$500 in the future. Any expenses such as airline tickets, car rental, etc. that are directly related to the charity's activities, will be paid by the charity.
 - b) Colel Chabad will keep record of any and all persons who may receive more than \$500 annually for part-time work and issue T4 or T4A for such work.

The audit of the Organization revealed they are not complying with the requirements set out in the Income Tax Act and have failed to comply with all elements of the Compliance Agreement it signed following our audit of the 2003 and 2004 fiscal periods. In particular, it was found that the Organization failed to maintain proper books and records, issued tax receipts not in accordance with the Act, failed to file an accurate information return, and did not devote all its resources to charitable purposes and activities outside of Canada. All of which were areas of non-compliance identified in our previous audit and for which the Organization agreed to implement the negotiated corrective measures.

The present audit relates to the operations of the Organization for the period January 1, 2008 to December 31, 2009. We have identified the following areas of non-compliance in addition to those identified in the previous audit.

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Official Donation Receipts - The Issuance of a Donation Receipt where a partial gift was made	149.1(2), 168(1)(d), Reg. 3501
2.	Activities outside Canada	149.1, 149.2, 168(1)(b)
3.	Books and records	230(2), 230(4), 168(1)(b), 168(1)(e)
4.	T3010 form	149.1(14), 168(1)b)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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

Identified Areas of Non-Compliance

Official Donation Receipts - The Issuance of a Donation Receipt where a partial gift was made

Legislation

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

To qualify as a gift, all three of the following conditions must be met: some property, either in the form of cash or a gift-in-kind, is transferred by a donor to a registered charity; the property is given voluntarily; the donor is transferring the property to the charity without expecting anything in return.

Audit Finding

Our audit determined, the Organization and/or persons associated were selling official donation receipts to "donors" for 10% to 20% of the receipts gross value. Based on the audit evidence, the primary motivation of the donor was not to enrich the Organization, but to make a monetary gain through the tax credit system.

The donor incorporated a company in Belize, [REDACTED] in which he is the sole officer, director and shareholder. According to the donor, amounts totalling 80% to 90% of the amounts donated, were paid back to the donor's corporation, or him personally via cash and/ or bank draft.

The following schedule shows the donation receipts issued by the Organization, where the donor received 80% to 90 % return of the amount donated.

Year: 2003	
Date	Amount of Donation Receipt
November 16, 2003	\$ 100,000
Total	<u>\$ 100,000</u>

Year: 2004	
Date	Amount of Donation Receipt
December 27, 2004	\$ 150,000
Total	<u>\$ 150,000</u>

Year: 2005	
Date	Amount of Donation Receipt
April 7, 2005	\$ 100,000
May 25, 2005	100,000
August 11, 2005	100,000
August 17, 2005	100,000
September 1, 2005	100,000
September 20, 2006	100,000
October 12, 2005	100,000
November 1, 2005	100,000
December 15, 2005	200,000
December 21, 2005	100,000
Total	<u>\$1,100,000</u>

Year: 2006	
Date	Amount of Donation Receipt
January 12, 2006	\$ 150,000
February 15, 2006	150,000
March 1, 2006	150,000
April 15, 2006	100,000
May 15, 2006	100,000
June 1, 2006	150,000
July 15, 2006	150,000
August 11, 2006	150,000
September 15, 2006	150,000
October 13, 2006	150,000
October 24, 2006	150,000
November 6, 2006	300,000
December 5, 2006	<u>125,000</u>
Total	<u>\$1,975,000</u>

The following schedule is a partial listing of reimbursements made by money order, from the Organization to [REDACTED], an offshore corporation, wholly owned by the donor. Note, that reimbursements made by cash, directly to the donor, are not included in this listing.

Date of reimbursement	Amount reimbursed by the Organization
December 6, 2005	\$ 90,000
December 14, 2005	82,000
December 21, 2005	172,000
December 30, 2005	90,000
January 20, 2006	US45,000
January 19, 2006	127,500
February 7, 2006	82,000
February 20, 2006	127,500
March 6, 2006	127,500
April 26, 2006	85,000
May 23, 2006	85,000
June 13, 2006	127,500
July 25, 2006	127,500
August 18, 2006	127,500
November 3, 2006	127,500
November 8, 2006	255,000
Total	\$1,878,500

Conclusion

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a donation receipt where there is no gift, no donative intent or the information on the receipt is false, is not in accordance with the Act. It is our position that the Organization participated in a donation scheme and has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the Organization's charitable status.

Activities outside Canada

Legislation

The *Act* permits a registered charity to carry out its charitable purposes, both inside and outside Canada, in only two ways:

1. It can make gifts to other organizations that are qualified donees as set out in the *Act*. Qualified donees include Canadian registered charities, certain universities outside Canada as listed in Schedule VIII of the Regulations of the *Act*, the United Nations and its agencies, and to foreign charities as per IC 84-3R5.
2. It can carry on its own charitable activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

A registered charity can carry on its charitable activities abroad through intermediaries such as an agent, a contractor or any other body, provided it can clearly demonstrate that the activities to which its resources were applied are under the organization's direct, effectual and constant direction and control.

Audit Finding

The following issues were identified from our review of the charitable activities conducted outside Canada, specifically, in Israel during 2008 and 2009:

Bank Drafts

The Organization distributed bank drafts totalling \$597,605, to numerous needy individuals in Israel, which were to be used to provide food and clothing. The funds were distributed to individuals in need, whose names appeared on welfare lists provided by numerous municipalities in Israel where the Organization conducts charitable activities. According to the Organization, individuals were also required to submit an application, to obtain these funds. The bank drafts were directed to individual recipients with amounts corresponding to the gift to be made. However, our review determined none of the applications were signed by the recipients. The applications for financial assistance provided to CRA, for our review, stated that the nature of the requests were for food and clothing. However, the agency agreement provided to us stated:

"As instructed by the Charity, the Agent will

- a) distribute food baskets to poor individuals and families, in accordance with the criteria set forth by the Charity; and*
- b) maintain and submit to the charity records detailing each transaction, including the recipient's name, the value of funds provided, and the purpose for which the funds are to be used."*

To be considered charitable in nature the Organization must be able to demonstrate it is an active and controlling participant in a program or project that directly achieves a charitable purpose.

██████████ Yarsolavsky

During the fiscal periods 2008 and 2009, the Organization distributed amounts of US\$12,800 and US\$19,000 respectively to its agent in Israel, who forwarded the funds to ██████████. According to correspondence reviewed during our audit, and signed by the agent of the Organization, ██████████ distributed US\$1,000 in 2008 to each of 12 families and US\$1,000 in 2009 to each of 16 families respectively. The funds were to be distributed, based on applications made to the Organization, by those in need. Our review determined the Organization did not have an agency agreement with ██████████. Furthermore, our review of the applications for financial assistance redistributed by ██████████, concluded the Organization failed to provide proof that the funds used were for the basic needs of the impoverished.

Finally, our audit determined, in 2009, there was a \$ 3,000 discrepancy between the amounts paid by the Organization and the total paid to the families as follows:

	<u>2009</u>
Paid by the Organization	\$19,000
Paid to the families	<u>16,000</u>
Discrepancy	<u>\$ 3,000</u>

Mr. Levi Yitzchak

In addition, in 2009, the Organization carried out charitable activities in Israel in conjunction with, Mr. Levi Yitzchak. The Organization distributed a total of US\$7,350 to Mr. Levi Yitzchak, who then disbursed US\$2,450 to each of three families. However, the Organization did not have an agency agreement with Mr. Levi Yitzchak. During the course of our audit, CRA was provided with applications for financial assistance, for the funds redistributed by Mr. Yitzchak. Our audit determined the documentation provided did not support that the Organization retained care and control of its activities carried on outside Canada. In particular,

the applications for financial assistance were not verified by a person authorized by the Organization, nor detailed how the funds were used. Specifically, the Organization provided a mere letter acknowledging the receipt of money by the agent. However, this does not constitute adequate proof that the agent has expended these funds for the charitable purposes for which they were intended.

Furthermore, the Organization, through documented evidence, must demonstrate the continued existence of the principal-agent relationship. Thus, the Organization must provide CRA with means of examining the internal decision-making mechanisms within the Organization's own structure through records such as: minutes of board meetings; inspections reports; internal communications (i.e., memoranda) as well as, policies and procedures that show that the Organization, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship. The audit of the Organization failed to provide CRA with proof that these mechanisms were in place in Canada. In addition, we have not been provided with documentation to support the approval of any project or program for which the Organization was devoting its resources through its agent in Israel.

An Organization is required to show they had significant input into its projects, as stated in *Bayit Lepletot v. Minister of National Revenue*, 2006 FCA 128

"The question which remains in such a case, as it does here, is who is carrying on the charitable works. It was incumbent upon the appellant to show that they were being carried on its behalf."

Eshel Yerushalaim Rechov Hachnasat

During the 2008 and 2009 years, the Organization distributed \$18,282 and \$12,525 respectively to a group in Israel, Eshel Yerushalaim Rechov Hachnasat (Eshel). Documentation, provided by the Organization stated Eshel provides food for the needy and the aged, specifically food baskets and a soup kitchen. However, the Organization failed to provide documentation to demonstrate that the money was used to pay for food for people in need. In addition, to assist the aged is not charity, but to alleviate conditions associated with old age, is considered charitable. CRA's policy on this matter is detailed below:

The Canada Revenue Agency publication, CPS-002, Relief of the Aged, states:

"1. The courts recognize that the relief of the aged is sufficient by itself to be considered charitable.

4. In the past, the standard for charitable relief was set at age 65 when beneficiaries could be presumed to be in need because of old age. However, an arbitrary 65-and-over age restriction is not the most effective means of

measurement. Therefore, organizations established for relief of the aged must rather demonstrate that they are relieving a need attributable to old age. This includes organizations catering to persons both over and under 65 years of age."

Conclusion

Bank Drafts

Contrary to their stated policy, the Organization did not request documentation to ensure that the bank drafts, distributed in Israel were used for the basic needs of the recipients. The recipients failed to sign the application to confirm that the funds received from Colel Chabad were used for the above stated purposes only. Consequently, the Organization has not demonstrated to CRA that the funds were provided to individuals for basic needs. Therefore, the Organization has failed to clearly demonstrate that the activities to which its resources were applied are under its direct effectual and constant direction and control.

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Our review determined the Organization did not have an agency agreement, detailing their involvement in Israel, with ██████████. Furthermore, our review of the applications for financial assistance redistributed by ██████████ concluded the Organization failed to provide proof that the funds used were for the basic needs of the impoverished. Finally, our audit determined, in 2009, there was a \$ 3,000 discrepancy between the amounts paid by the Organization of \$ 19,000 and the total paid to the families of \$16,000. As a result, the Organization failed to show the activities to which its resources were applied are under the organization's direct, effectual and constant direction and control.

Mr. Levi Yitzchak

The Organization sent funds to its agent in Israel with insufficient documented evidence that its resources were being expended according to its instructions. As a result, the Organization could not prove that an appropriate principal-agent relationship existed between themselves and Mr. Levi Yitzchak. Our audit has concluded all resources sent to the Israel by the Organization were controlled by non-qualified donees, which is contrary to the legislative requirements of the ITA.

Eshel Yerushalaim Rechov Hachnasat

The activities carried on outside Canada in Israel through Eshel Yerushalaim Rechov Hachnasat, by the Organization failed to demonstrate the activity was charitable in nature. Specifically, the Organization did not provide information on how it relieved conditions associated with old age by providing food. As a result, the Organization failed to show how funds donated to Eshel Yerushalaim Rechov Hachnasat, directly achieved a charitable purpose.

Books and records

Section 230(2) of the ITA requires every registered charity to maintain adequate records and books of account at an address in Canada recorded with the Minister. The purpose of this requirement is to enable the charity to accurately provide CRA with the information required by the Act as well as enable CRA to verify the accuracy of reported information through the conducting of audits.

In addition to the retention of copies of the donation receipts that section 230(2) explicitly requires, section 230(4) also states that "every person required by this section to keep books of account shall retain

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

A charity is not meeting its requirement to maintain adequate books and records if it fails to exercise due care with respect to ensuring the accuracy thereof.

Non-charitable use of resources – Travel expenses

Audit Findings

In 2009, the Organization incurred an expenditure of \$ 39,533 for reimbursement of travel expenses to a director for the years 2007 to 2009. The Organization was not able to provide sufficient documentation to support the payments were incurred for activities of the Organization. During the audit, the Organization presented us with a summary of travel which was based on estimates for the year.

Documentation to support the amounts claimed as travel expenses were not provided for our review. Consequently, without documentation, we were unable to determine if the travel expenses were incurred for activities of the Organization.

Fundraising expenditures

Audit Findings

For the 2008 and 2009 years, the Organization incurred fundraising expenditures. Specifically, they paid amounts to telephone fundraisers to call potential donors to raise funds for the Organization. The Organization made cheque payments to individuals, as listed below, who in turn, cashed the cheques and purportedly paid cash amounts to students, based on an hourly rate of \$10 per hour in 2008 and \$ 9 per hour in 2009 respectively.

The table below details the fundraising expenditures incurred by the Organization that could not be substantiated.

Date	Cheque #	Payee name on the cheque	Amount
April 1, 2008		Zalman Zirkind	\$ 1,000
April 2, 2008		Zalman Zirkind	1,660
April 3, 2008		Zalman Zirkind	2,900
April 14, 2008			3,050
November 6, 2008			1,835
Total			\$10,445
April 24, 2009			\$ 3,879
Total			\$ 3,879

Our audit concluded, the Organization failed to provide documentary proof that the students who conducted the telephone fundraising activities actually received the purported cash payments. Without the required documentation we were unable to determine if the expenses were incurred for charitable expenditures.

Conclusion

It is our view that the Organization failed to maintain adequate books and records. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position the Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone there may be grounds to revoke the registered status of the Organization.

T3010 form

The audit also determined that the Charity is improperly completing the Information Return in that many of the items reported were incorrectly identified or omitted.

Subsection 149.1(14) of the ITA requires that the return must be in prescribed form and contain prescribed information. A charity is not properly meeting its information return filing requirements when it fails to exercise due care with respect to insuring the accuracy thereof. It is the responsibility of the Charity to ensure that the information that is provided in its return, schedules and statements, is factual and complete in every respect.

The Charity improperly completed the T3010 for the fiscal periods ending December 31, 2008 and December 31, 2009 in that items, noted below were reported incorrectly:

- For 2008, Mr. Zalman Zirkind's salary should have been included with fundraising expenses as he spends a substantial amount of time on fundraising. An amount of \$33,230 should be added on line 5020 of the T3010 form, Total fundraising expenditures included in line 4950. The total of this line should be \$103,842. Line 5000, of the T3010 form should be \$38,446 instead of \$71,676.
- In 2009, the organization should have added an additional amount of \$ 7,457 on line 5020, Total fundraising expenditures included in line 4950" of the T 3010 form. This amount represents the total paid to individuals who have made telephone solicitation. The same amount should be deducted on line 5010, Total expenditures on management and administration.

For 2009, the salary of Mr. Zalman Zirkind should be included with fundraising expenditures since he spends most of time in this activity. An amount of \$31,525 should be added on line 5020 of the T3010 form, Total fundraising expenditures included in line 4950.

The breakdown of line 4950, total expenditures before gifts to qualified donees was not completed correctly. The total of lines 5000 to 5040 of the T3010 must match with the total shown on line 4950. As a result of the items mentioned above, the amount on line 5010, Total expenditures on management and administration", should be \$91,495 instead of \$49,786.

Conclusion

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity

fails to file a Registered Charity Information Return as and when required under the Act or a Regulation. For this reason, there may be grounds for revocation of the charitable status of the Organization.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

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

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

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

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below.

- 15 -

Yours sincerely,



Jean Dion

Verification & Enforcement Division

Tax Services Office: Montréal

Section 445-1-3

Telephone: 514-229-0594

Toll Free: 1-800-267-2384

Facsimile: 514-283-8208

Address: 305 Boul. René-Lévesque West
Montréal QC H2Z 1A6

Enclosures:

- CRA letter of October 16, 2006
- CRA letter of May 29, 2007
- Compliance agreement signed by the Organization on June 5, 2007

C.C.:





REGISTERED MAIL

Colel Chabad Lubavitz Foundation of Israel
4770 Kent Avenue Suite 302
Montréal (Québec)
H3W 1H2

BN:138369921RR0001

Attention: Mr. Zalman Zirkind

File #:0968917

January 5, 2016

Subject: Audit of Colel Chabad Lubavitz Foundation of Israel

Dear Sir:

This letter is further to the audit of the books and records of the Colel Chabad Lubavitz Foundation of Israel (the Organization) conducted by the Canada Revenue Agency (CRA). We acknowledge receipt of your letters dated February 24 and July 10, 2014, with your representations to our letter dated November 26, 2013. Your representations will be addressed in a separate letter. This letter will address our limited review of the information requested by our letter dated December 4, 2014, as well as the additional information submitted after our meeting held on November 14, 2014.

Limited Review of Books and Records

The CRA has identified specific areas of non-compliance with the provisions of the income Tax Act and/or Regulations in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Official Donation Receipts - The Issuance of a Donation Receipt where a partial gift was made	149.1(2), 168(1)(d), Reg. 3501
2.	Activities outside Canada 2.1. Activities through an agent, Mr. Moshe Shmuel Deutsch 2.2. Activities outside Canada for the period January 1, 2008 to December 31, 2009	149.1, 168(1)(b)
3.	Board of Directors and Fundraising Activity 3.1. Minutes of Board of Directors' Meetings 3.2. Fundraising activities	149.1, 149.2, 168(1)(b)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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

Identified Areas of Non-Compliance

1. Official Donation Receipts - The Issuance of a Donation Receipt where a partial gift was made

Legislation

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

To qualify as a gift, all three of the following conditions must be met: some property, either in the form of cash or a gift-in-kind, is transferred by a donor to a registered charity; the property is given voluntarily; the donor is transferring the property to the charity without expecting anything in return.

Audit Findings

Our letter dated November 26, 2013, contained a partial schedule of official donation receipts issued along with amounts reimbursed by the Organization to the donor. Below is a revised schedule updated with the additional information obtained through analysis of documents submitted by the Organization. The results of our review demonstrate that the Organization was involved in a scheme whereby it would issue an official donation receipt to a donor for the full amount of the alleged gift and then subsequently return 80 to 90% of the original amount back to the donor. The primary motivation of the donor was not to enrich the Organization, but rather make a monetary gain through the tax credit system.

Partial Schedule of Amounts Donated -Revised:

Date	Receipt No.	Amount	Account No. as per Official Donation Receipt
11-18-2003		\$100,000	
	Total 2003	\$100,000	
12-30-2004		\$150,000	
	Total 2004	\$150,000	
04-08-2005		\$100,000	
05-27-2005		\$100,000	
08-12-2005		\$100,000	
08-19-2005		\$100,000	
09-02-2005		\$100,000	
09-22-2005		\$100,000	
10-16-2005		\$100,000	
11-02-2005		\$100,000	
12-16-2005		\$200,000	
12-22-2005		\$100,000	
	Total 2005	\$1,100,000	
01-17-2006		\$150,000	
02-15-2006		\$150,000	
03-01-2006		\$150,000	
04-18-2006		\$100,000	
05-17-2006		\$100,000	
06-01-2006		\$150,000	
07-17-2006		\$150,000	
08-14-2006		\$150,000	
09-15-2006		\$150,000	
10-13-2006		\$150,000	
10-25-2006		\$150,000	
11-08-2006		\$300,000	
12-06-2006		\$125,000	
	Total 2006	\$1,975,000	
02-15-2007		\$180,000	
	Total 2007	\$180,000	

The following schedule is a partial listing of reimbursements made by bank transfer or bank draft, from the Organization to [REDACTED] (or similar versions of this name), an offshore company incorporated in Belize, whereby the donor was the sole officer, director and shareholder. Note that reimbursements made by cash directly to the donor, or through other charitable organizations are not included in this listing.

Partial Schedule of amounts returned to donor:

Date of reimbursement	Amount reimbursed by the Organization
12-Jan-05	\$131,250
18-Apr-05	\$90,000
09-Jun-05	\$90,000
17-Aug-05	\$90,000
01-Sep-05	\$90,000
19-Sep-05	\$90,000
29-Sep-05	\$90,000
31-Oct-05	\$90,000
18-Nov-05	\$90,000
21-Dec-05	\$172,000
09-Jan-06	\$82,000
19-Jan-06	\$127,500
20-Feb-06	\$127,500
06-Mar-06	\$127,500
26-Apr-06	\$85,000
23-May-06	\$85,000
13-Jun-06	\$127,500
25-Jul-06	\$127,500
18-Aug-06	\$127,500
20-Sep-06	\$127,500
18-Oct-06	\$127,500
03-Nov-06	\$127,500
08-Nov-06	\$255,000
Total	<u>\$2,677,750</u>

Our review revealed twenty three transactions whereby funds were originally deposited to the Organization's bank account and later returned to the donor. The Organization's

bank account was under the responsibility of two signing officers, Director Zalman Zirkind and [REDACTED]. It appears that full participation by the Organization's signing officers was necessary to allow this arrangement to occur. Specifically, funds were first deposited into the Organization's bank account, and then the two individuals with signing authority, Mr. Zalman Zirkind and [REDACTED], signed the required documentation to issue bank drafts or wire transfers to the company wholly owned by the donor.

The funds returned to the donor were transferred to his corporation, [REDACTED] by wire transfer or bank draft issued to the same corporate name or a similar corporate name bearing a slight variance ([REDACTED]). The fact of the corporate name bearing such a striking resemblance to the name of [REDACTED] appears to have been set up as an attempt to mask the true intent of the transfers.

During our discussions held with your representatives on November 14, 2014, as well as your letters dated July 10, 2014, you stated that the Organization was a victim of a scheme perpetrated by an outside party, that you were simply following the orders of your agent abroad and the cheques issued through the Organization's bank account were reaching their intended destination for distribution to the poor and needy.

For the Organization to be victim of such a scheme perpetrated by an outside party, it would have no knowledge where the funds were transferred to or the ultimate use of such funds. The Organization claimed that funds were being transferred under the orders of its intermediary in Israel. The Organization claimed they did not question the will of the intermediary because he was an upstanding member of the community. Based on our audit results and review of the Organization's statements, we have determined it failed to exercise direction, control and supervision over the application of its funds and more so acted as a conduit to funnel money to an organization that is not a qualified donee¹.

Furthermore, although the Organization claims itself to be a victim of the scheme initiated by the donor and its intermediary, it has not presented any documentation to demonstrate it is pursuing any legal avenues to recover funds from either party involved. In fact, the Organization continued to transfer funds to its intermediary in Israel and proceeded to make the intermediary an agent of the Organization by entering into an agency agreement even after it claimed to be a victim of a scheme perpetuated in part by the same individual.

On August 18, 2015, [REDACTED] Moshe Shmuel Deutsch, currently the Organization's agent in Israel, previously the intermediary, was reached by telephone to obtain his version of

¹ The Canadian Committee for the Tel Aviv Foundation v. Canada (2002 FCA 72) 2002-03-01; Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue) (2002 FCA 323) 2002-09-13; Bayit Leplilot v. Canada (Minister of National Revenue) (2006 FCA 128) 2006-03-28.

the facts. [REDACTED] Deutsch informed us that he has no knowledge of the donor who participated in the scheme, and in fact, he received instructions from the Organization on the specific programs and activities funds were to be directed to. This is in direct contradiction to the information submitted by the Organization.

Ultimately, the responsibility to safeguard the assets of the organization to ensure they are expensed to support its charitable objects and activities rests entirely with the Organization. It appears that the Organization, at a minimum, failed to safeguard its assets and maintain direction and control of its resources.

Conclusion

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a donation receipt where there is no gift, no donative intent or the information on the receipt is false, is not in accordance with the Act. It is our position that the Organization participated in a donation scheme and has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the Organization's charitable status.

2. Activities outside Canada

Legislation

The Act permits a registered charity to carry out its charitable purposes, both inside and outside Canada, in only two ways:

1. It can make gifts to other organizations that are qualified donees as set out in the Act. Qualified donees include Canadian registered charities, certain universities outside Canada as listed in Schedule VIII of the Regulations of the Act, the United Nations and its agencies, and to foreign charities as per IC 84-3R5.
2. It can carry on its own charitable activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

A registered charity can carry on its charitable activities abroad through intermediaries such as an agent, a contractor or any other body, provided it can clearly demonstrate that the activities to which its resources were applied are under the organization's direct, effectual and constant direction and control.

Whether a registered charity carries out its own foreign activities through persons under its immediate control, or through intermediaries, it should put the following measures in place:

- provide to persons under its immediate control or its intermediaries clear and detailed directions concerning the activity, and how it is to be carried out;
- receive reports from those persons or entities that describe their activities and use of resources; and
- monitor and supervise the activity on an ongoing basis.

2.1. Activities outside Canada through its intermediary, [REDACTED] Moshe Shmuel Deutsch

The Organization carried on certain activities through its intermediary in Israel, [REDACTED] Moshe Shmuel Deutsch by transferring funds to him directly and later in the name of [REDACTED]. According to the explanations provided by the representative, the Organization believed all funds were being sent to its intermediary and was completely unaware that funds were actually destined to reimburse the donor. From the information reviewed for the period between 2004 and 2006, we determined that \$2,677,750 never reached its stated purpose but was diverted to reimburse the donor.

For the period under review, the Organization failed to provide any books and records to support its charitable activities outside Canada through its intermediary, such as:

- list of criteria for selection of beneficiaries or recipients;
- list of beneficiaries or recipients;
- written agreement signed between the Organization and each entity in or outside of Canada or an agent (intermediary);
- all deposits statement from the entities which have received the funds of the Organization;
- all financial statement of the entities or the agent ;
- report from the entities which received funds on how the transferred funds have been used, or have been given to the selected beneficiaries or recipients;
- list of the activities which the Organization's funds were used;
- all documents supporting Organization's control and direction of its resources carrying through intermediary.

In the absence of the items listed above, the Organization has not taken the necessary measures to ensure that funds were used for charitable activities for which they were intended. Furthermore, the Organization failed to exercise direction, control and supervision over the application of its funds sent to its intermediary in Israel, therefore any funds transferred are considered to be gifts to a non-qualified donee.

2.2. Activities outside Canada during January 1, 2008 to December 31, 2009

Audit Finding

The following issues were identified from our review of the charitable activities conducted outside Canada, specifically, in Israel during 2008 and 2009:

Bank Drafts

The Organization distributed bank drafts totalling \$597,605, to numerous needy individuals in Israel, which were to be used to provide food and clothing. According to the Organization, the funds were distributed to individuals in need, whose names appeared on welfare lists provided by numerous municipalities in Israel. To obtain access to these funds, individuals were required to submit an application explaining their financial need. Bank drafts were then sent directly to the individual recipients with amounts corresponding to the gift to be made.

The applications for financial assistance provided to CRA for review, stated that the nature of the requests were for food and clothing. However, the agency agreement provided to us stated:

"As instructed by the Charity, the Agent will

- a) distribute food baskets to poor individuals and families, in accordance with the criteria set forth by the Charity; and*
- b) maintain and submit to the charity records detailing each transaction, including the recipient's name, the value of funds provided, and the purpose for which the funds are to be used."*

To be considered charitable in nature the Organization must be able to demonstrate it is an active and controlling participant in a program or project that directly achieves a charitable purpose.

On November 7, 2006, the Organization made a change requesting new objects to undertake in its charitable activities.

On October 2, 2007, the CRA requested clarification on the type of activities the Organization wished to pursue. It further stated in its letter "Charitable organizations may not directly provide cash (funds) to non-qualified donees, in this case the poor, but may provide the other supplies you describe." Even though the Organization was advised not to provide cash directly to individuals, it issued 142 cheques in 2009 totalling \$597,605 to Individuals.

Based on these actions, the purpose of the Organization is to send money to the non-qualified donees abroad for their activities. As such, the main function of the organization appears to be acting as a fundraiser.

Contrary to their stated policy, the Organization did not request documentation to ensure that the bank drafts, distributed in Israel were used for the basic needs of the recipients. Consequently, the Organization has not demonstrated to CRA that the funds were provided to individuals for basic needs. Therefore, the Organization has failed to clearly demonstrate that the activities to which its resources were applied are under its direct effectual and constant direction and control.

Conclusion

Under section 149.1 (1), a charitable organization must devote all of its resources to charitable activities it conducts itself. The Organization does not have the management and control of funds or transferred to non-qualified donees. Therefore, for each reason above, there may be grounds under section 168 (1) (b) to revoke its status as a registered charity.

3. Board of Directors and Fundraising Activity

3.1. Minutes of Board of Directors Meetings

Minutes of the meetings held by the Board of Directors for June 30, 2009 and June 4, 2010, were submitted by Mr. Zalman Zirkind. The directors of the board in attendance, as per the minutes, were Mr. Zalman Zirkind, [REDACTED] and [REDACTED].

In reviewing the minutes, we found the content for both minutes to be similar except for the amounts reported for each year. We contacted the two other directors who were named as active participants in the meetings and found that either they had no specific knowledge of the meetings or stated that they never attended either meeting and had no active involvement with the Organization. Furthermore, there is no indication that the Board of directors exercised any decision making in regards to the Organization's programs and activities.

We are of the opinion that the Organization has no active board of directors and the minutes were provided to appease the request from CRA and demonstrate that the Organization has an active board.

3.2. Fundraising activities

The CRA assesses fundraising activities of registered charities. It seeks to determine if there are any misrepresentations in fundraising solicitations. A deceptive fundraising activity is unacceptable for it diverts the donations from the public to a different activity.

The Organization solicits a portion of funds through direct mail outs. An example of the letter used by the Organization to solicit funds through direct mail out was provided by

the director of the Organization during our last meeting held in his office.

The heading of the solicitation letter states the following:

"THIS CHANUKAH, HOSPITALIZED BOYS AND GIRLS IN ISRAEL NEED YOU!"

The solicitation letter further describes how funds collected through this initiative will be used to serve the hospitalized boys and girls in Israel so that they may enjoy a better Chanukah. Helping hospitalized boys and girls in Israel to enjoy Chanukah is not an activity which the Organization is registered under the Income Tax Act, nor has any documentation been provided which demonstrates that funds were used for this purpose. It appears the Organization is providing deceptive information in its fundraising campaign which is considered unacceptable.

The information contained in the T3010 of the Organization should be clear and factual. The information should represent the actual position of the Organization as regards the structure (directors) and its charitable activities. Recording accurate and factual information about the Organization enables the donor to make an informed decision on which charitable activities to support. The Organization did not report accurate information on its T3010 in regards to its members on the Board and fundraising activity.

Conclusion

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file a Registered Charity Information Return as and when required under the Act or a Regulation. For this reason, there may be grounds for revocation of the charitable status of the Organization.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations

submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

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

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below.

Yours sincerely,




Jean Dion
Verification & Enforcement Division
Tax Services Office: Montréal
Section 445-1-3

Telephone: 514-229-0594
Toll Free: 1-800-267-2384
Facsimile: 514-283-8208
Address: 305 Boul. René-Lévesque West
Montréal QC H2Z 1A6

C.C.:



Enclosure: CRA letter of November 26, 2014



VIA FAX: 514.283.8208

February 24, 2014

Verification & Enforcement Division
CANADA REVENUE AGENCY
Montreal Tax Services Office, Section 445-1-3
305 Boul. Rene Levesque West
Montreal, QC H2Z 1A6

ATTENTION: Mr. Jean Dion


Re: Colel Chabad Lubavitch Foundation of Israel Inc.
(hereinafter referred to as "Colel Chabad" or "the Organization")

Dear Sir:

In response to your letter of November 26, 2013 regarding the above mentioned charity, and further to your exchanges with Me. Reeve Pearl, we disagree with your findings and conclusions. In connection thereto, the following are the **Facts and Representations**:

Issues Raised

In your letter you raise the following points:

1. A previous audit of the years 2003 and 2004 raised certain points of non-compliance. In order to resolve the situation, Colel Chabad signed a compliance agreement on June 5, 2007. The agreement consisted of the following undertakings:
 - a. to improve the documentation of scholarship recipients,
 - b. to amend its objects to encompass all of its charitable activities,
 - c. to pay for specific expenses incurred by the Director rather than provide a monthly allowance,
 - d. to prepare minutes and inspection reports showing amounts approved and sent to Israel for all projects,
 - e. to keep policies and procedures,
 - f. to issue T4 or T4A slips to any persons who receive more than \$500 annually for part time work for Colel Chabad.
 2. Donation receipts issued for alleged partial gifts during the period from 2003-2006 (prior to previous audit).
 3. English translation of applications for assistance by needy families in Israel were not signed by the applicants, resulting in lack of proof that the funds used were for the basic needs of the impoverished.
- 

4. An alleged discrepancy of \$3,000 in amounts transferred to Colel Chabad's agent in Israel, [REDACTED] Yarsolavsky, and lack of agency agreement with that agent.
5. Lack of an agency agreement with Mr. Levi Yitzchak, who physically distributed \$7,350 to three families approved by the Organization for those distributions.
6. Payments to Eshel Yerushalaim Rechov Hachnasat are for food baskets and soup kitchen to be provided to the needy and the aged, without having proved that the aged recipients were in need.
7. Reference is made to the requirement to keep books and records per section 230(2), however no specific issue with respect to the compliance thereto seems to be raised in your letter.
8. Travel expenses reimbursed, alleged to be based on estimates for the year.
9. Payments made to students for part time work, with attached time records, totalling \$14,324 over the period of two years, were made in cash and therefore no record exists of the actual payment of those amounts.
10. It is contended that the Organization failed to file a Registered Charity Information Return due to the following two issues:
 - a. On the annual returns for 2008 and 2009, the Director's salary was included in line 5000, while you contend that it should be included in fundraising expenses due to the Director's role in fundraising as well as running the charitable operations of the Organization.
 - b. An amount of \$7,457 which was included on line 5010 (Total expenditures on management and administration) should have been included on line 5020 (Total fundraising expenditures included in line 4950)

Based on the above contentions, you propose to revoke the charitable registration of Colel Chabad under subsection 168(1). It should be noted that the Organization raised and distributed over \$2,000,000 over the period of the audit, and that the alleged irregularities discussed in your letter are of relatively insignificant amounts.

We will treat each of the above points sequentially.

Previous Audit and Compliance Agreement

- As mentioned above, the previous audit of Colel Chabad noted certain deficiencies in the record keeping of the Organization. In order to remedy the situation and ensure full compliance, the Organization signed a Compliance agreement on June 5, 2007 [Exhibit 1]. It then sent to the CRA (along with an English translation) a copy of the scholarship application, procedures and selection criteria regarding the scholarship applications, and policy for recovery of funds if the student does not study in the school [Exhibit 2].
- The compliance agreement was accepted by the CRA on June 13, 2007 [Exhibit 3].
- The Organization thereafter undertook all corrective measures as agreed in the compliance agreement.



- Agency agreements, amended objects and proposed activities were drafted and sent to the Charities Directorate for pre-approval (see attached correspondence with Ms. Karen de Vries, CRA Charities Directorate) [Exhibit 4].
- The Organization did not undertake any activities in contravention of its objects.
- Proper and complete documentation of the scholarships awarded was kept in a file for each student, including:
 - the name and address of the recipient,
 - the name and address of the school which the student was attending,
 - the original banking documentation including cheques and bank drafts,
 - a copy of the scholarship applications forms and application approvals,
 - academic transcripts used to evaluate the request for funding, and
 - a statement indicating that the student in fact paid his tuition fees, and a copy of the report cards received from the students.
- Minutes and Inspection reports were prepared indicating the approval of all amounts sent to Israel for all projects.
- Ultimate approval of all funding remained under the authority of the Director, [REDACTED] Zalman Zirkind.
- The agents in Israel prepared year-end financial reports to show where and how the money received had been spent and a copy of those reports has been provided to the CRA previously [Exhibit 5].
- Rather than receiving a travel allowance, the Director has submitted actual expenses incurred for reimbursement [Exhibit 6].
- Records were kept of all persons who worked on a part time basis in fundraising activities, the number of hours worked and the amounts paid. No person received in excess of \$500 annually and therefore no T4 or T4A slips were issued [Exhibit 7].
- We note that, although you suggest that the Organization had not complied with the agreement, none of the issues raised in the current audit directly relate to points raised in the prior audit or in the compliance agreement.

Donation Receipts Issued for Alleged Partial Gifts

- In your letter you analyze a number of transactions which took place between 2003 and 2006 and allege that they result in partial gifts.
- The Compliance Agreement resolved the issues for 2003 to 2006. As such, these are irrelevant to this audit and should not be an issue raised in your letter of November 26, 2013.



- In the first instance, we fail to understand why these transactions, all of which occurred prior to the previous audit and prior to the signing of the compliance agreement, and outside of the period of this audit (2008-2009), are discussed in your audit letter.
- No further indication of any doubtful transactions exists subsequent to the prior audit and compliance agreement.
- All records of all transactions relating to the issue raised were provided for examination by the CRA, and there were no findings of any wrongdoing by the Director of the Organization, [REDACTED] Zirkind.

As such we believe that there are no grounds on the basis of these transactions to revoke the registration of the Organization.

English Translation of Application for Assistance not Signed by Applicant


- The Organization provided funding to meet basic needs and support in the form of food baskets and clothing to qualified needy families in Israel.
- Applications for such support were made in Hebrew, being the official language of Israel and the native language of the recipients of support. These original applications were signed by the recipients and approved by the Organization, and are available for your examination on request. Please see attached sample of such original signed Hebrew applications [Exhibit 8].
- As such, translations of the application forms into English were prepared for your benefit.
- The translations of the forms were not signed by the applicants.
- On the basis of these translated documents, you have concluded that the Organization has not demonstrated to the CRA that the funds were provided to individuals for basic needs, and therefore that the assistance qualifies as charitable purposes.

The recipients are deemed to be needy as per the public record of the local municipalities in the State of Israel [Exhibit 5].

We respectfully submit that had you asked for the original of the applications you would have seen that they were properly signed by the recipients who acknowledged that the funds were to be used for basic needs only.

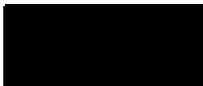
Additionally, as the recipients were included on the lists provided by the municipalities of welfare recipients, it is reasonable to assume that the small amounts received would be used for basic needs, regardless of the signature on the agreement.

Alleged Discrepancy of \$3,000 in Amounts Transferred to Colel Chabad's Agent in Israel, [REDACTED] Yarsolavksy

- On May 4, 2009, Colel Chabad transferred an amount to its agent in Israel, Moshe Deitsch, for assistance to 16 families in the city of Kiryat Malachi, in the amount of \$1,000 USD per family for basic needs (food and clothing).
 - At the time the exchange rate between Canadian Dollars to US Dollars was approximately 1.17.
- 

- As such, an amount of \$19,000 CAD was disbursed, equivalent to \$16,239.32, see attached bank statement and letter [Exhibit 9].
- The alleged discrepancy is therefore a direct result of the foreign exchange rate at the time and not indicative of any irregularity.

Lack of Agency Agreement With [REDACTED] Yarsolavsky and Mr. Levi Yitzchak

- The agent for Colel Chabad in Israel was during the period covered by the audit, Moshe Deitsch ("the Agent").
 - An agency agreement [Exhibit 4] was prepared in accordance with the compliance agreement, and was submitted to the Charities Directorate for pre-approval.
 - The agency agreement stipulates that all funds remain the property and under the control of the Organization until they are expended for their approved purpose.
 - The agency agreement provides for the requirement to keep books and records of amounts received and disbursed and to make a financial reporting to the Organization on a regular basis.
 - The agency agreement also provides for the recovery of any funds misused.
 - The agency agreement, which was approved by the CRA, does not contain any provision to the effect that the agent must physically disburse the assistance to each recipient individually or that no help may be employed in the distribution of the assistance.
 - Colel Chabad delivered assistance to needy families throughout the country, and it was thus impractical for the Agent to personally deliver all assistance. As such he provided assistance destined to the approved families in certain municipalities to an individual who would then disburse the funds to each family.
 - In particular, [REDACTED] Yarsolavsky, [REDACTED] of the Municipality of Kiryat Malachi and Mr. Levi Yitzchak in Emek Lod made deliveries of certain assistance to designated families (see attached letters from Mr. Deitsch).
 - At all times, the control and allocation decisions remained in the hands of Colel Chabad and its Director, [REDACTED] Zalman Zirkind.
 - The Organization was provided a list of all applications, disbursements and assistance and at all times retained full control by reason of their power to veto any decision made by any intermediary.
 - Full reporting of the funds received and disbursed and the person physically involved in the disbursement were made by the Agent, and as noted above, the agency agreement provided for recovery of the funds should they not be used in approved purposes by the Organization.
 - As such at all times the charitable activities were those of the Organization, and all funds and decisions remained fully in the control of the Organization.
- 

- The persons involved in disbursing the funds did so under the direction of the Agent and ultimately of the Organization, and were all persons of upstanding reputation, who shared the goals and purposes of the Organization in providing assistance to the needy as directed by the Organization (letter from [REDACTED] as to the reputation and services provided by [REDACTED] Yarsolavsky Exhibit 10)
- At no point was any property or funds transferred to any persons for their own use or ownership. On the contrary, it was always used for the intended charitable purpose. At all times the funds of the Organization were kept separate from those of the Agent and the persons distributing the assistance.
- Again we wish to point out the relatively small amounts involved in such disbursements compared to the wider activities of the Organization.
- CRA Charities Guidance CG-002 states the following with regard to intermediaries:

1.2. Direction and control when using intermediaries

The Canada Revenue Agency (CRA) requires that a charity take all necessary measures to direct and control the use of its resources when carrying out activities through an intermediary. When carrying out activities through an intermediary, the following steps are strongly recommended:

- *Create a written agreement with the intermediary, and implement its terms.*
- *Communicate a clear, complete, and detailed description of the activity to the intermediary.*
- *Monitor and supervise the activity.*
- *Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.*
- *Arrange for the intermediary to keep the charity's funds separate from its own, and to keep separate books and records.*
- *Make periodic transfers of resources, based on demonstrated performance.*
- *A charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities.*

It should be noted that the above steps are recommended and not required by law. Given that an agency agreement [Exhibit 4] was in place directing the use of the funds and providing for their recovery, and that full accounting [Exhibit 5] was made of the funds expended on purposes approved by the Organization, we respectfully submit that it is not reasonable to conclude that payments were made to non-qualified donees or that the charitable activities carried on were not Colel Chabad's own charitable activities as required by law.

Payments to Eshel - Yerushalaim, Rechov Hachnasat Orchim

- The Organization was pre-authorized by the CRA to provide food and basic supplies to needy families in Israel (those families listed as needy by the municipal authorities in the State of Israel) in the correspondence with the Charities Directorate mentioned above [Exhibit 4].



- As a part of these activities, the Organization runs a soup kitchen in Jerusalem known as Eshel, which also distributes food baskets to needy families.
- The soup kitchen serves the needy and elderly Holocaust survivors who live below the poverty line, who are referred to the soup kitchen via the Department of Social Assistance and Sustenance (also referred to in English as the Ministry of Welfare and Social Services - משרד הרווחה והשירותים החברתיים).
- See attached translation of a letter from [REDACTED], who operates the soup kitchen, concerning the requested funds and their usage [Exhibit 11].
- The soup kitchen staff provides Colel Chabad's Director with a summary of expenses (food purchases only) requiring to be paid, and Colel Chabad transfers the required amount to the bank account in Israel.
- You have contended that support of the aged is not a charitable activity. However in this case, being a soup kitchen catering to needy recipients referred by the Ministry of Welfare and Social Services, it is clear that it relates to the needy elderly, and not simply any person over 65 years of age as suggested in your letter.

We submit that the services provided by Colel Chabad with its soup kitchen and food baskets are clearly charitable in nature and within the approved objects of the Organization and in compliance with the law.

Requirement to Keep Books and Records

- Your letter references the requirement for every registered charity to maintain adequate records and books of account; however, it does not make mention of any specific violation or deficiency with regards to this obligation.
- We will therefore treat the issues of travel expenses fundraising expenses and the T3010 – Annual Charitable Return separately.

Travel Expenses

- In your letter you assert that travel expenses incurred by the Organization of \$39,533 over the period from 2007 to 2009 were based on estimates.
- Please see attached reimbursement claims detailing the kilometres travelled for activities of the Organization [Exhibit 6].
- The amounts per kilometre used to calculate the amount of reimbursement are based on the CRA's published amounts for reasonable automobile allowance rates per kilometre.
- The distances travelled are by no means unreasonable for a sole director of an organization with such activities, including fundraising efforts.
- Given the Director's modest salary from the organization (\$33,230 in 2008 and \$31,525 in 2009) it is not unreasonable for him to request a reasonable reimbursement of travel costs.



We submit that the travel costs reimbursed represent activities undertaken on behalf of the Organization and do not in any way indicate a deficiency in the books and records of the Organization.

Fundraising Expenses

- The Organization employs from time to time, students who work on a part time basis to help with fundraising activities, particularly telephone solicitation.
- For the years 2008 and 2009, documentation was provided to the CRA indicating the name, address, and hours worked by each student in the fundraising activities, as well as the rate paid for the fundraising activities, which totalled \$14,324 over a period of the two years [Exhibit 7].
- The compliance agreement stipulated that a T4 or T4A slip be submitted for all persons who received more than \$500 in a year; however no individual received more than \$500 in a year as per the attached documentation.
- Rather than pay an individual cheque to each of the students (for relatively small amounts), a cheque was made to the supervisor, one of three individuals as noted in your letter, and that individual cashed the cheques and paid each individual student in cash.
- It is not at all unusual for an organization with a budget of over \$1M annually to pay small expenditures out of petty cash, and the records kept of the payments and amounts should be sufficient to justify the expense.
- As such we submit that there is no indication of deficiency of books and records with regards to the fundraising expenses

Form T3010 – Information Return

- There is no claim in your audit findings that any amounts were over or underreported, what is in question is the classification of certain expenses.
- You suggest that the salary of [REDACTED] Zirkind should have been entirely accounted for in fundraising activities due to his role in fundraising.
- However, [REDACTED] Zirkind is the sole director [REDACTED] of the Organization and is responsible for all decision making, operations, and is directly involved in all charitable activities of the Organization.
- Given that [REDACTED] Zirkind is solely responsible for the charitable operations of the Organization, we believe that his salary was properly classified and disclosed.
- In the previous audit, it was not indicated to the Organization that the CRA had any issue with the classification of [REDACTED] Zirkind's salary, which at a minimum is arguably reasonable to classify under expenses for charitable activities.
- **CRA Guide T4033 - Line 5000** – Enter the part reported at line 4950 that represents all expenditures on charitable activities, except for gifts to qualified donees.



Examples include:

- o running the charity's own day-to-day programs;
 - o occupancy costs (rent, mortgage payments, hydro, repairs, and insurance) for buildings used to carry out charitable activities;
 - o most salaries; and
 - o education and training for staff and volunteers.
- As such we submit that the filing and preparation of the T3010 form were not deficient or involving lack of due care, and should not be construed as grounds to revoke the Organization's registration.

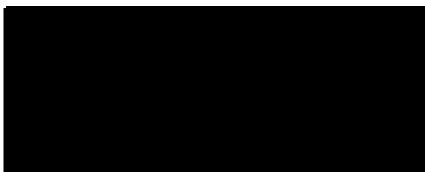
Proposed Remedial Steps

Although we disagree with your findings and conclusions based on the transactions discussed above, in order to ensure ongoing compliance and maintain goodwill, we propose the following remedial steps be taken following this audit:

1. To ensure adequate records are kept for CRA purposes, original Hebrew applications for assistance will be made available to the CRA as requested.
2. Agency agreements will be signed with any individuals involved in the distribution of assistance, regardless of the amount. The primary agent's agency agreement will be amended to include this requirement.
3. For all money transfers, a record will be kept with a copy of the cheque or bank draft, the approval of the amounts, and a report of the ultimate disbursement by the agent and any individuals involved in the distribution of the assistance.
4. The Organization will no longer pay for part time work by a single cheque to a supervisor who then pays the workers in cash, and will henceforth issue individual cheques to all part time staff. The Organization maintains its commitment to issue a T4 or T4A slip to any individual receiving compensation for services in excess of \$500 in a given year.
5. We acknowledge your position on the reporting of the salary of Rabbi Zirkind on the T3010 Information Return, and propose that an allocation be agreed upon between the Organization and the CRA with regards to his salary.

Trusting the above is to your satisfaction, we remain,

Very truly yours,



VIA FAX: 514.283.8208

July 10, 2014

Verification & Enforcement Division
CANADA REVENUE AGENCY
Montreal Tax Services Office, Section 445-1-3
305 Boul. Rene Levesque West
Montreal, QC H2Z 1A6

ATTENTION: Mr. Jean Dion

Re: Colel Chabad Lubavitch Foundation of Israel Inc.
(hereinafter referred to as "Colel Chabad" or the "Charity")

Dear Sir:

Following our meeting of April 9, 2014 in connection with your audit of the above mentioned Charity, and subsequent telephone conversations, we would like to submit the following **Additional Representations**:

You have agreed that with one exception, the alleged irregularities mentioned in your findings consisted of minor issues which in isolation do not warrant any revocation action on the part of the Canada Revenue Agency. Furthermore we understand that the aforementioned issues were dealt with sufficiently in our representations of February 24, 2014, and as such do not require further treatment at present.

We shall therefore focus our attention on the point raised in your letter of the allegation of donation receipts issued for partial gifts from [REDACTED] during the period of August, 2005 through November 2006. This period is prior to the scope of your current audit, and was subject to the provisions of a Compliance Agreement signed in 2007.

Please receive the following comments:

- The partial gifts were the result of a scheme perpetrated by an outside party, [REDACTED], taking advantage of Colel Chabad without the knowledge of its Director, to further his own ends of laundering the proceeds of illegal billings to the Ontario Health Insurance Plan ("OHIP").
- Throughout the period during which [REDACTED] was engaged in the scheme, Colel Chabad had certain deficiencies in its record keeping internal controls, which you have highlighted and Colel Chabad has corrected.
- The cheques involved in the allegations were written by Colel Chabad to their agent in Israel for distribution to the poor and needy.
- To the best of the knowledge of Colel Chabad, the cheques were reaching their intended destination and being used for the intended charitable purposes.
- Colel Chabad was a victim of the scheme, and was at no time aware of such a scheme, nor were they complicit in it.

Mr. Jean Dion

Colel Chabad Lubavitch Foundation of Israel Inc.

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- Although your letter indicates that the issue of partial gifts took place between 2003-2006, it is our understanding that the issue of partial gifts took place only during the period from August 2005 through November 2006.
- This period was covered in a previous audit performed by Mr. Jean Dion.
- All books and records were made available to the CRA at that time.
- The CRA performed a detailed audit of the period in question and had at their disposal all of the information and documentation which was available to Rabbi Zirkind.
- The CRA did not find any evidence of a scheme of partial gifts occurring during that audit.
- Those deficiencies in record keeping and controls were noted in the previous audit, and were the subject of a Compliance Agreement (the "Agreement") which was signed and complied with by Colel Chabad in June 2007.
- Colel Chabad, and in particular, its director, [REDACTED] Zirkind undertook steps to ensure compliance with the Agreement without delay, and all the deficiencies noted in that report have since been corrected.
- There has not been any indication of any other such scheme occurring since the implementation of the Agreement, or any other irregularity in the use of the funds of the Charity.
- Evidence of the efforts to ensure compliance have already been submitted to you. For example, correspondence with the Charities Directorate for approval of all activities, improvements to the forms used to approve recipients for funding, an Agency Agreement signed with the agent in Israel requiring him to account for all funds and to reimburse any funds not used for their intended purposes.
- The above, as well as your findings in the present audit confirm that Colel Chabad has complied with the requirements enumerated in the Compliance Agreement.
- The immediate implementation of measures contained in the Compliance Agreement, which serve to prevent such events from occurring, is evidence that Colel Chabad and [REDACTED] Zirkind were operating in good faith.
- The CRA, with specialized training, expertise, and sophisticated tools were unable to detect any scheme during the course of a detailed and dedicated audit with all the available documentation at their disposal.
- It is unreasonable to impose a greater detection burden on the Director, [REDACTED] Zirkind, who has no specialized training, sophistication or expertise in auditing, and was occupied full time by his charitable purpose.
- The issue came to light only through the statements of [REDACTED] who pleaded guilty on charges of illegal medical billing. In exchange for his plea, [REDACTED] received a relatively light penalty without facing any jail sentence.
- The Ontario Provincial Police ("OPP"), on the basis of [REDACTED] statements, executed a search warrant at the offices of Colel Chabad in Montreal in November 2007.

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We trust the above to be to your satisfaction, and we remain
Very truly yours,

PERSONAL & CONFIDENTIAL

May 6th, 2016

BY FAX: 514-283-8208

CANADA REVENUE AGENCY
Tax Services Office Montreal
Section 445-1-3
305 Rene Levesque Blvd. West
Montreal, QC H2Z 1A6

Attention: Jean Dion

Re: Colel Chabad Lubavitch Foundation of Israel
BN: 138369921RR0001
Our file: 802079-001

Dear Mr. Dion,

We have reviewed your letter of January 5, 2016, and respectfully submit the following comments.

First and foremost, it must be stated that despite making previous representations by letters dated February 24 and July 10, 2014, you have chosen not to address our detailed representations. Furthermore, it is our opinion that our letters responded to numerous issues, including the issue involving [REDACTED]. As such, we understand that your position, in light of the foregoing, is that you have deemed accepted our previous representations regarding our client, Colel Chabad Lubavitch Foundation of Israel (hereinafter the "Foundation") since you have not provided us with any comments in regard to our letters.

After reviewing your letter of January 5th, 2016 we cannot help but think that you are inferring that our client is acting in bad faith. Indeed, besides requesting information regarding issues that were discussed by the undersigned in previous letters, you allude to our client being involved in a scheme without providing appropriate documentation to support your accusations. It must be restated that no findings of wrongdoing or complicity were reported against the Foundation by the Ontario Provincial Police. No charges were brought against Colel Chabad or [REDACTED] Zirkind. This was explained in our letters dated February 24 and July 10, 2014.

It must also be recalled that our client agreed to enter into a Compliance Agreement with the Canada Revenue Agency (hereinafter "CRA") on June 13, 2007. Accordingly, our client sought to improve on the compliance issues following the conclusion of the agreement and is still continuously looking to improve itself. Indeed, the Foundation's purpose is to help the poor and needy, which it did and continues to do. It is therefore nonsensical that the Foundation is being targeted as being involved in a scheme, when it was duped in the first place by [REDACTED].

As for the period of reference in your letter of January 5th, 2016, we are unaware as to the reasons motivating your decision to examine, once more, a period preceding the Compliance Agreement of June 2007. Indeed, we respectfully submit that the Foundation in accordance with the Compliance Agreement took the necessary and required steps to address the CRA's concerns. Therefore, audits or raised concerns should be for fiscal years subsequent to June 2007, so as to enable the Foundation to make new adjustments and changes if need be.

In *Canadian Committee for the Tel Aviv Foundation v. R.* (2002 FCA 72) (hereinafter "*Tel Aviv*"), the appellant was audited on three occasions. The facts of the case are as follows:

[7] The Committee was registered as a charity in 1985. Its charitable objectives relate to the promotion of education and relief of poverty and sickness in Tel Aviv, Israel. Its registration was predicated on its representations to the Minister that its activities would be carried out through The Tel Aviv Foundation, its agent in Tel Aviv, pursuant to a written agency agreement dated July 10, 1986 ("the Agency Agreement"). It is common ground that a charitable organization is considered to be carrying on its own activities to the extent that it acts through an agent.

[8] The Minister had audited the Committee on two earlier occasions before the 1997 Audit. An audit for its 1990 fiscal year ("the 1990 Audit") revealed several instances of non-compliance with the Act, including the lack of documents to support its overseas expenditures, irregularities surrounding preparation and issue of a proper T4 for its president, and improper payroll deductions for its employees. The Minister gave the Committee a written explanation of the instances of non-compliance as well as directions as to how to comply with the Act and its regulations. The 1990 Audit did not lead to any indication by the Minister that the Committee's status as a registered charity was in question.

[9] The Committee was again audited in 1995 for its fiscal year ending December 31, 1993 ("the 1993 Audit"). The Minister advised the Committee in writing on March 26, 1996 that it was contravening the provisions of the Act in eleven instances, several of which are germane to the present appeal. They are listed in paragraph [11], *infra*. In his letter, the Minister warned that he could give notice of his intention to revoke the Committee's registration, pursuant to paragraph 168(1)(c) of the Act, if the Committee failed to comply with the requirements of the Act and its regulations. The Minister gave the Committee 30 days to make representations as to why revocation should not occur, subsequent to which the Director of Charities would decide whether or not to proceed with the issuance of a notice of intention to revoke.

[10] The Committee responded to the Minister by letter of July 19, 1996, explaining that its agent had undergone a complete change in management since the Agency Agreement had been signed and was not aware of the reporting requirements in that agreement. Further, the Committee made the following undertakings to the Minister:

Both the Canadian charity [the Committee] and the agent have committed to conform strictly to the requirements of Revenue Canada, including the specific provisions of the Agency Agreement, which is still in force and effect ("1996 Undertaking").

On the basis of the 1996 Undertaking, the Minister informed the Committee, by letter dated February 10, 1997, that the charitable organization status of the Committee would remain unchanged.

[11] The 1997 Audit took place in 1999. The Minister advised the Committee in writing on December 15, 1999, that he continued to have serious concerns about the repeat of deficiencies noted in the 1993 Audit. The Minister identified the seven deficiencies, namely [...]

[12] Because of these deficiencies and the Minister's perception that the Committee has failed to observe its 1996 Undertaking, the Minister advised the Committee that there were grounds for revoking its charitable status. [...]" (Our added emphasis)

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Similarly, in *Canadian Magen David Adom for Israel v. Minister of National Revenue* (2002 FCA 323), the appellant was audited on numerous occasions for different fiscal years. Most important, however, is the opportunity given to the appellant to remedy the CRA's concerns:

"[35] The January 13, 1995 audit report is important for two reasons. The first is that it discloses evidence that the appellant apparently paid for an identification system for MDA in the face of the express disapproval of the Minister. The second is the indication that the auditor considered the existence of a formal agency relationship to be an aspect of the appellant's activities with respect to the provision of ambulances to MDA. As noted above, the record suggests that the Minister had until then accepted the notion that the provision of ambulances to MDA fell within the charitable goods policy.

[36] By letter dated January 23, 1997 (Appeal Book, Volume I, pages 102-3), the Minister advised the appellant of the result of the audit, stating its concerns about the lack of an agency agreement, the unauthorized purchase of the identification system for MDA for \$113,994 and the resulting shortfall in the appellant's disbursement quota. That letter indicated that if the appellant "addressed these concerns", its status as a registered charity would not be affected. The record does not contain any written response to this letter.

[37] On June 24, 1997, the Minister instructed an auditor to conduct an audit of the appellant for its 1996 fiscal year, to follow up on deficiencies identified in the previous audit and to verify the validity of certain anonymous allegations of wrongdoing by the appellant [...]." *(Our added emphasis)*

Contrary to these cases, however, the audit of the Foundation deals with the period prior to the Compliance Agreement. Our client contends that pursuant to said Agreement, it took the necessary and required steps to address the CRA's concerns and move forward. Moreover, it entered into an Agency Agreement with its intermediary in Israel around the same time so as to have better direction, control and supervision over the use and application of its charitable funds.

Instead of examining the Foundation's compliance to the previous issues for which it entered into an agreement, it appears that you have decided to concern yourself with the same previous issues for the period of January 2005 to November 2006, thus preceding the Compliance and Agency Agreements of 2007. It seems that you have intentionally ignored the Compliance Agreement entered between the CRA and our client. In our opinion, this is unreasonable and it is tantamount to acting in bad faith as CRA is breaching its own formal agreement.

Unfortunately, the Foundation cannot change the fact that it was duped by [REDACTED]. However, our client has taken the necessary steps to comply with the issues raised by the CRA back in 2007. Furthermore, our client undertakes to continue its improvement and compliance of the CRA's rules and regulations and, if needed, it agrees to enter into an updated compliance agreement if there are any recent concerns to address.

As for our comments to the concerns raised in your letter dated January 5th, 2016, we would like to respond as follows.

1. Official Donation Receipts – The issuance of a Donation Receipt where a partial gift was made

- You assert that the Foundation was "involved in a scheme". However, we remind you that [REDACTED] duped our client, who had no knowledge whatsoever at the time that it was

- 4 -

being deceived by [REDACTED]. Moreover, the Ontario Provincial Police, after executing a search warrant at the offices of the Foundation, did not conclude after having the full cooperation and disclosure from the Foundation any wrongdoings or complicity against the Foundation. The CRA's allegation is therefore questionable and unfounded.

- The primary motivation of the donor is of no concern to the Foundation. Its mission is to help the poor and needy of Israel. It was therefore believed that, before knowledge of the deceitful acts, [REDACTED] was, in good faith, donating for that cause.
- It appears that you have included only a partial schedule of the amounts donated and funds transferred to [REDACTED] Moshe Deutsch. It seems, at first glance, that CRA picked and chose specific transactions while disregarding all other transactions that would demonstrate that the Foundation is a credible and veritable charity organization.
- You allege that "reimbursements made by cash directly to the donor or through other charity organizations are not included in this listing". There exists no basis for this allegation.
- You mention that your "review revealed twenty three transactions [...]". You omit however the number of transactions in total you reviewed and the total amounts for these transactions. Moreover, you allege that certain funds were returned to the donor, without any documentation to show that the funds were returned to [REDACTED].
- On page 5, you state that it "appears to have been set up as an attempt to mask the true intent of the transfers". Once more, your inference of bad faith is evident, but lacks any sufficient evidence to support a "scheme" and our client's implication in it. We reiterate that the Foundation was deceived by the donor in question you refer to, [REDACTED]. It cannot be held responsible for being cheated out of funds that it thought was going directly to help the poor and needy in Israel.
- As for the exercise of direction, control and supervision over the application of its funds, our client acknowledges that there were certain administrative deficiencies prior to the Compliance Agreement signed in June 2007. However, since entering into the said agreement, the Foundation has exercised a great deal of direction, control and supervision over its allocation of funds and has adopted measures to comply with the CRA's previous concerns. Therefore, it is unjust and unreasonable to ignore the Foundation's compliance with CRA's rules and regulations post-June 2007 while focusing on a period and issues that had not yet been brought to the Foundation's attention and knowledge. In doing so, you are double-penalizing our client by ignoring the formal agreement and its compliance.
- In regard to your claim that the Foundation has not "presented any documentation to demonstrate it is pursuing any legal avenues to recover funds", our client maintains that following the uncovering of [REDACTED] scheme, the Foundation was told that government authorities froze his assets and he thus became insolvent at that time. Accordingly, the related legal fees to recover the funds from [REDACTED] outweighed any amount that could be recovered from him. It is incumbent upon the Foundation that it has a fiduciary obligation not to waste charitable donations for futile causes. Moreover, our client wonders if you would have it use funds destined for the poor and needy to pay for attorney's fees to recover amounts in a process that ultimately would not succeed.
- We note that your discussion with our client's agent in Israel took place in August 2015, thus eight (8) years after the Compliance Agreement and Agency Agreement were concluded. Our client maintains that since the conclusion of those agreements, it has exercised direction, control and supervision of the distribution of its funds to specific

- 5 -

programs and activities. We question your motive in raising this concern. And further question the reliability of information received eight (8) years later from a person whose knowledge and understanding of the English language is weak.

- Indeed, our client initiated corrective measures following the Compliance Agreement to have better control and documentation for all transfers to Israel for all charitable activities.
- Furthermore, the Foundation's agents in Israel prepare year-end financial reports which demonstrate where and how the funds received have been distributed. Copies of these reports were provided to the CRA.
- Proper and complete documentation of the grants awarded were kept in a file for each needy person including the name and address of the recipient, the originating bank documentation including cheques and bank drafts, a copy of the grant application forms and application approvals.
- In light of the foregoing, we are of the opinion that there is no merit for the CRA in giving notice to the Foundation proposing to revoke its registration as the Foundation has taken the necessary and required steps to comply with the raised issues for events prior to June 2007.

2. Activities outside Canada

- In subsection 2.1, the CRA rehashes its concerns for a "period under review" for which a Compliance Agreement was entered into between CRA and the Foundation. Pursuant to this Agreement, the Foundation has on a fully transparent basis honored all requests for documentation from the CRA.
- As for subsection 2.2, which deals with a period from January 1st, 2008 to December 31st, 2009, the following comments are given with respect to this concern:
- You have identified bank drafts totaling \$597,607 as having been distributed by the Foundation to needy individuals in Israel to provide for food and clothing. The process of distributing these charitable donations in such a way was performed in the following manner:
 - i) An application was submitted to the Foundation from Israel in the Hebrew language, and signed by the applicant who would receive the monetary benefit;
 - ii) An English translation of this application was provided to the CRA for each and every one of the bank drafts that were the subject of the audit. The English translation did not have the signature of the applicant, due to the fact that it was only a translation. However, as mentioned, the original application in Hebrew did have the applicant's original signature;
 - iii) The Foundation had full control from the moment it received the application in approving said application for assistance as well as the moment of disbursement of the assistance to the applicant in need of these funds for food and clothing. Furthermore, each and every one of these applicants' name appeared on a welfare list prepared in the municipal region of the residence of the applicant;
 - iv) Upon receipt of the application for the grant, prior to any acceptance of such application, an appropriate determination and verification is performed by the Foundation to establish whether the applicant is in fact in need of the charitable support. Once the determination has been made regarding the admissibility of the person in need for the grant, said grant is disbursed.

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- We respectfully submit that you have erroneously determined that the applications were not signed by the recipients. We reiterate that the original signature of the applicant appears on the original application in the Hebrew language. Once again, our client, in full cooperation, submits that these forms are available for review and audit if requested.
- Moreover, our client respectfully submits that these individuals in need did appear on the welfare lists in Israel and, under Jewish law, there is more dignity for a recipient to receive money to buy groceries directly than to provide handouts of goods.
- In light of the foregoing, the Foundation is able to demonstrate it is an active and controlling participant in a program or project that directly achieves a charitable purpose.
- Moreover, since being audited, the Foundation has modified its process and only food is distributed directly to the individuals in need.
- Accordingly, our client reiterates its commitment to satisfying the CRA's rules and regulations and is agreeable to entering into an updated compliance agreement to ensure that it can build on the corrective measures it has already put in place since the June 2007 Compliance Agreement was concluded.

3. Board of Directors and Fundraising Activities

- Our client disagrees with your opinion that the "Organization has no active board of directors and the minutes were provided to appease the request from CRA and demonstrate that the Organization has an active board".
- Indeed, our client contends that your opinion is inconclusive. In regard to [REDACTED], he states that he does not remember meetings back in 2009 and 2010. Must we remind you that we are presently in 2016, almost five years later. We do not think that you can make any inferences from his lack of memory of these meetings.
- Furthermore, we submit that you have "cherry-picked" your summary of your conversation with [REDACTED], as it appears that he stated "that he was aware that funds were being sent to Moshe Deitsh to help needy families" (in CRA's memo for file, March 10, 2015, 18:10 entry).
- As for [REDACTED], we question his response and comments. [REDACTED] stated that he never stepped in to the Foundations offices. Yet, this is contradictory to the reality. Indeed, we have documentation which demonstrates various donations in person to the Foundation for which he received receipts directly at the Foundation's office. These documents are available at your request.
- Furthermore, in 2011, there was a modification to the Directors of the Foundation, as it appears from the *Registraire des entreprises*. As a matter of fact, the current Directors are Zalman Zirkind, Matisyahu Meizenberg and Dov Ehrentrei. A copy of the extract is enclosed hereto for reference.
- In regard to subsection 3.2, our client contends that there were no misrepresentations in its fundraising solicitations. However, it appears that you question a solicitation letter that refers to "This Chanukah, hospitalized boys and girls in Israel need you!"
- Our client reiterates that its charitable nature is to feed and take care of the poor and needy. It is common in Jewish tradition to fundraise around the holidays. As such, we refer you to the flyer that was sent out to people and, as it appears from said flyer, people could buy, for different amounts, candies for the children, buy food, clothes, refreshments, etc.

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Accordingly, this fulfilled the Foundation's charitable purpose and mission and there were no misrepresentations in its fundraising solicitations.

- Consequently, our client contends that it has satisfied the CRA's rules and regulations. However, as stated herein, it is agreeable to entering into an updated compliance agreement to ensure that it can build on the corrective measures it has already put in place since the June 2007 Compliance Agreement was concluded.

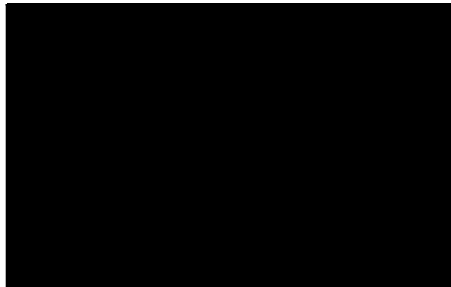
In light of foregoing, our client is of the opinion that the Director General of the Charities Directorate should not give notice of its intention to revoke the registration of the Foundation by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

Once more, we refer you to our previous representation letters dated February 24 and July 10, 2014. These detailed letters already respond to the concerns raised in your letter dated January 5, 2016. We ignore the reasons why you have chosen to ignore said letters, but we reiterate each and every argument put forward in these letters.

Our client contends that it has set-up mechanisms to respect the CRA's rules and regulations and undertakes to continue improving on such, including entering into an updated compliance agreement to ensure the continuity of the Foundation's purpose and mission of helping the poor and needy in Israel. To date, the Foundation has administered and distributed millions to help feed and clothe the poor and needy. The Foundation's charitable good work should not be impeded or stopped through the revocation of its charitable status, especially since the Foundation has been working in conjunction with the CRA since concluding the Compliance Agreement to ensure its administrative and charitable processes are in order.

We remain available to discuss this matter further and provide any additional information or documentation, so that we can resolve this amicably for all.

Yours very truly,

A large black rectangular redaction box covering the signature area.

APPENDIX "A", Comments on Representations

Issue: False Donation Receipts issued by the Organization / Lack of direction and control of the Organization's Resources

Donation scheme

Our audit found that during the 2003-2007 fiscal periods, the Colel Chabad Lubavitz Foundation of Israel (the Organization) appears to have entered into an abusive donation scheme with [REDACTED], whereby it issued official donation receipts to [REDACTED] for the full amount of alleged gifts he made to the Organization, and then subsequently returned 80-90% to him without correcting or replacing the related, inflated receipts. From 2003-2007, a minimum of 26 occurrences of this transaction-type was identified; the total receipts issued to [REDACTED] reflected the Organization's receipt of \$3,505,000 in alleged gifts. However, the Organization retained only a fraction of the value it receipted, approximately \$525,000/\$3,505,000, and the grossly inflated donation receipts allowed [REDACTED] to unduly benefit from tax benefits and deductions he was not entitled to.¹

As stated in our January 6, 2016, letter, during this scheme's enactment, the Organization's bank account was under the responsibility of its signing officers, Mr. Zalman Zirkind and [REDACTED]. Concerning the alleged gifts involved in the donation scheme, the Organization's officers deposited the original amounts into its account, issued corresponding donation receipts for these amounts to [REDACTED], authorized bank drafts representing 80-90% of the original amounts, and returned the bank drafts to [REDACTED], mainly through an offshore company incorporated in Belize for which [REDACTED] was the sole officer, director, and shareholder.² Detailed knowledge of the Organization's banking practices and authorization to perform banking functions was required at each stage of this process.

According to its representations, the Organization's representatives were not knowingly involved in returning \$2,677,750 to [REDACTED]. The scheme was enacted in partnership

¹ We note that the Organization's representations include that no findings of wrongdoing were reported against the Organization by the Ontario Provincial Police (OPP), and no charges were brought against Colel Chabad or [REDACTED] Zirkind for their involvement with [REDACTED]. While we have no comments on the exactness of these statements, it is the Canada Revenue Agency's (CRA) position that our review relates to whether the Organization has met and continues to meet its obligations as a registered charity in Canada. In this regard, a registered charity is required to comply with all related legislative and common law requirements on an ongoing basis – failing which its registered status may be revoked in the manner described in section 168 of the Income Tax Act. This includes, but is not limited to, making sure that its official donation receipts are accurate when issued, and safeguarding, controlling and directing the use of all its resources. In the Organization's case, not being charged with any criminal wrongdoing by the OPP does not significantly substantiate that it has met and continues to meet its obligations as a registered charity under the Income Tax Act.

² Our audit found that the Organization had issued two substantial donation receipts to [REDACTED] in 2003 and 2004: for \$100,000 and \$150,000. In addition, 10 receipts totaling \$1,100,000 were issued to him in 2005, 13 receipts totaling \$1,975,000 were issued to him in 2006 and one receipt in 2007 totaling \$180,000.

between [REDACTED] and the Organization's intermediary in Israel, [REDACTED] Moshe Shmuel Deutsch. Under [REDACTED] Moshe Deutsch's instructions, the Organization's representatives unknowingly transferred funds to the offshore company, believing those funds were applied towards its charitable purposes in Israel by [REDACTED] Moshe Deutsch.

However, as stated in the Canada Revenue Agency's (CRA) previous letter, dated January 5, 2016, we contacted [REDACTED] Moshe Deutsch on August 18, 2015, for his comments, and he informed us that he's not aware of [REDACTED]. In response, the Organization's May 6, 2016, representations state as follows:

"We note that your discussion with our client's agent in Israel took place in August 2015, thus eight (8) years after the Compliance Agreement and Agency Agreement were concluded. Our client maintains that since the conclusion of those agreements, it has exercised direction, control and supervision of the distribution of its funds to specific programs and activities. We question your motive in raising this concern. And further question the reliability of information received eight (8) years later from a person whose knowledge and understanding of the English language is weak."

In this regard, the CRA's motive for contacting [REDACTED] Moshe Deutsch was to better understand his role as the Organization's agent in Israel, and his purported role in diverting funds to [REDACTED]. It remains of concern to the CRA that the Organization does not refute that [REDACTED] Moshe Deutsch was unaware of the donation scheme, as this contradicts the Organization's explanation about how it was a victim of the scheme, instead focusing its response on time elapsed and [REDACTED] Moshe Deutsch's English.

Furthermore, as noted in our previous letter, it remains of concern to the CRA that the Organization decided to enter into an agency agreement³ with [REDACTED] Moshe Deutsch, even after it claimed to be the victim of a scheme, perpetrated in part by him, that defrauded the Organization of \$2,677,750 of its funds. Based on the information provided by the Organization, [REDACTED] Moshe Deutsch continues to be the Organization's sole documented agent in Israel. In the CRA's opinion, this undermines the credibility of the Organization's limited explanation of how the scheme was carried out. We question why, as the Organization's sole documented agent in Israel, all of its purported poverty relief activities in Israel continue to be carried out by transferring funds to [REDACTED] Moshe Deutsch for redistribution if he misappropriated the Organization's funds in the past.

CRA review of the Organization's 2003-2006 fiscal periods

We note the Organization's representations state it would be unreasonable for the CRA to hold the Organization accountable for non-compliance issues relating to the 2003, 2004, 2005, and 2006 fiscal periods. The 2003 and 2004 fiscal periods were previously audited, and the CRA failed to identify and address the abusive donation scheme in the

³ The CRA received a copy of this Agency Agreement on January 23, 2008.

course of the previous audit – including specifically referencing the Compliance Agreement the CRA signed with the Organization in June 2007.

The Organization's representations also refer to the cases of *Canadian Committee for the Tel Aviv Foundation v. R.* (2002 FCA 72) and *Canadian Magen David Adom for Israel v. Minister of National Revenue* (2002 FCA 323), which relate to the respective revocations of these organizations' charitable registrations following repeated occurrences of non-compliance with the Act, despite each being given opportunities to remedy the CRA's identified concerns. In this regard, the Organization's representations appear to suggest that the CRA is not extending sufficient opportunity to the Organization to remedy its own instances of non-compliance with the Act, thus diverging from its approach in the cited cases, as we are only now raising concerns that were not previously addressed by the 2007 Compliance Agreement. In particular, we note the following statement:

"...Instead of examining the Foundation's compliance to the previous issues for which it entered into an agreement, it appears that you have decided to concern yourself with the same previous issues for the period of January 2005 to November 2006, thus preceding the Compliance and Agency Agreements of 2007. It seems that you have intentionally ignored the Compliance Agreement entered between the CRA and our client. In our opinion, this is unreasonable and it is tantamount to acting in bad faith as CRA is breaching its own formal agreement..."

It is the CRA's position that the particulars of the cited cases are not applicable to the Organization's situation. The CRA disagrees that its decision to resolve an audit, during the course of which the Organization withheld pertinent information, with a Compliance Agreement, would preclude the CRA from addressing material, concealed non-compliance activity in a subsequent review. The CRA further disagrees that its failure to identify a donation scheme the Organization concealed from it during the course of a previous audit, would preclude the Organization's responsibility for participating in such an endeavour - including by issuing false receipts, failing to safeguard its assets, and failing to maintain direction and control of its resources.

In this regard, as stated in our previous correspondence, it appears the scheme's existence was obscured by its use of variations of the intermediary,

██████████ for the offshore company in Belize⁴ through which the Organization funneled resources back to its donor, ██████████. As such, the CRA did not have the occasion to consider and resolve the donation scheme when it decided to avail itself of a compliance agreement to resolve the non-compliance issues identified during the previous audit. The Organization had ample opportunity to divulge the existence of the scheme both during the CRA's first audit and our current audit, but chose to withhold the scheme's existence from CRA audit staff, including that the Ontario Provincial Police had served the Organization with a search warrant and conducted a search of its premises in an effort to collect information relating to the scheme.

⁴ ██████████ and other similar variations of this name

Furthermore, the CRA's current audit concerns an expanded review period that includes years that were not reviewed for the purposes of the previous audit and its resultant Compliance Agreement. The Compliance Agreement signed between the CRA and the Organization related to a review of its 2003 and 2004 fiscal periods. It is the CRA's position that the existence of a Compliance Agreement relating to non-compliance issues observed for the Organization's 2003 and 2004 fiscal periods does not absolve the Organization from responsibility from its apparent complicity in an abusive donation scheme spanning its 2003-2006 fiscal periods. In this regard, we note the fraudulent donation receipts issued during the 2003 and 2004 fiscal periods represent only 7% (\$250,000/ \$3,505,000) of the receipts issued further to the abusive donation scheme.

Therefore, the vast majority of inflated receipts were issued, and related resources diverted, during the 2005 and 2006 fiscal periods, which were not reviewed by the CRA prior to the current audit. As previously stated in our letter dated January 6, 2016, from the information reviewed, we determined that \$2,677,750 of the Organization's resources were diverted to reimburse [REDACTED] instead of forwarded to its intermediary, [REDACTED] Moshe Deutsch.

As we do not accept the Organization's limited explanation that it funneled funds to [REDACTED] on [REDACTED] Moshe Deutsch's orders, without knowledge that its funds were not used to relieve poverty in Israel, it is our position that the Organization has not provided an acceptable explanation as to how it was possible for an unrelated party to misappropriate the Organization's resources and exploit its receipting privileges without its complicity. In the CRA's opinion, the Organization's representations do not reasonably address how [REDACTED] was able to secure both the inflated receipts and the return of the majority of the funds he allegedly gifted to the Organization without its participation. As previously stated, the responsibility to safeguard the Organization's assets to ensure they are expended to support its charitable objects and activities rests entirely with the Organization, and the Organization failed to safeguard its assets and maintain direction and control over its resources.

Accordingly, the CRA does not accept the Organization's claim that it is not responsible for issuing false donation receipts to [REDACTED] and for failing to maintain direction and control of its resources. Absent sufficient explanation to the contrary, it remains the CRA's position that the Organization issued false donation receipts and acted as a conduit to funnel money to a non-qualified donee.

Non-compliance issues identified following Compliance Agreement

Concerning the Organization's activities following its signing of a 2007 Compliance Agreement with the CRA, our letter dated January 5, 2016, also raised concerns relating to its failure to resolve previously identified non-compliance issues as observed by the CRA in its review of its 2008 and 2009 fiscal periods. In this regard, the Organization failed to provide books and records to support its charitable activities outside Canada through its intermediary. While the signed Compliance Agreement

concerned the Organization's commitment to its scholarship program in Israel, and expressly stated the Organization would not gift funds to non-qualified donees, our audit found that the Organization did not grant scholarships for the years under audit, and that it primarily continued to transfer funds to other entities, including needy individuals by way of its agent, [REDACTED] Moshe Deutsch, and through intermediaries with whom/which the Organization entered into no formal agreements. The Organization failed to substantiate that it properly allocated its resources towards its charitable activities through its agent, [REDACTED] Moshe Deutsch, and ignored the CRA's instruction that it was not permissible for the Organization, as a registered charity in Canada, to achieve its purposes of relieving poverty in Israel by issuing funds directly to individuals.⁵

According to our audit findings, despite previously revising its activities to agree to distribute food rather than funds to individuals, in 2009, the Organization issued 142 cheques totalling \$597,605 to individuals in Israel, claiming these were to be used to purchase food and clothing. No funds were disbursed for this activity in 2008. During fiscal periods 2008-2009, the Organization claims to have carried on certain activities through additional intermediaries in Israel: [REDACTED] Yarsolavsky,⁶ Mr. Levi Yitzchak,⁷ and to an entity called Eshel Yerushalaim Rechov Hachnasat (Eshel).⁸ The Organization failed to provide CRA with sufficient documentation to support carrying on charitable activities through these intermediaries. We note the absence of the following in particular:

- Written agreements between the Organization and additional intermediaries containing descriptions of the activities towards which funds were applied;
- Documents supporting internal decision-making mechanisms within the Organization's own structure, demonstrating the Organization directed and controlled activities it funded, and acted as the guiding mind in a principal-agent relationship;
- Intermediaries' financial statements;
- Reports and documentation demonstrating how funds were spent, supported by proof of payment.

In its representations to the CRA, the Organization describes the process through which its funds were distributed to needy individuals in Israel: applications to receive

⁵ On October 2, 2007, in a response related to the Organization's proposed change in objects, the CRA advised the Organization that registered charities cannot directly provide funds (cash) to non-qualified donees. In the Organization's case, it could not disburse funds directly to individuals that were poor, because transfers of money without direction and control over how these are spent are not acceptable. However, it could provide clothing, medical supplies, and furniture to the poor, as the CRA will make an exception where the nature of the property being transferred is such that it can reasonably be used only for charitable purposes. In its letter dated October 22, 2007, the Organization stated its intention to send money to its Agent ([REDACTED] Moshe Deutsch) to buy food baskets to distribute to the poor and to run a soup kitchen. These new activities were stipulated in Paragraph 1 of the Agency Agreement between the Organization and [REDACTED] Moshe Shmuel Deutsch.

⁶ To whom the Organization transferred \$12,800 and \$19,000 in 2008 and 2009.

⁷ To whom the Organization transferred \$7,350 in 2008.

⁸ To which the Organization transferred \$18,282 and \$12,525 in 2008 and 2009.

'monetary benefits' were submitted to the Organization for consideration, the applicants were confirmed to be in need by the Organization, and all applicants' names appeared on welfare lists in Israel, the Organization had full control over the approval of grant applications, and its approval was required for grants to be disbursed through its documented agent, [REDACTED] Moshe Deutsch.

The Organization claims it delivered assistance to needy families throughout the country, and it was thus impractical for its agent, [REDACTED] Moshe Deutsch, to personally deliver all assistance. As such, [REDACTED] Moshe Deutsch's responsibilities were delegated to others ([REDACTED] Yarsolavsky, Mr. Levi Yitzchak) in certain municipalities. The Organization's representations state that its agents prepared year-end financial reports demonstrating where and how the funds were distributed, and that "...Proper and complete documentation of the grants awarded were kept in a file for each needy person including the name and address of the recipient, the originating bank documentation including cheques and bank drafts, a copy of the grant application forms and application approvals..." The Organization states that payments to Eshel were to run a soup kitchen and distribute food baskets to needy individuals.

The CRA's remaining concerns are two-fold: such documentation does not serve to substantiate that the Organization maintained direction and control over its intermediaries; and, disbursing funds or "grants" to individuals to relieve poverty is not a charitable activity even if it were an activity demonstrated to have been conducted under the Organization's direction and control. Concerning funds transferred to Eshel in particular, while the CRA agrees that providing food to the needy is charitable and falls within the Organization's objects, based on the information provided, the Organization has not substantiated that the funds it transferred to Eshel were used to provide food on its behalf and that it maintained direction and control over this purported activity.

We note that the Organization states in its representations that since being audited, it has modified its process and only food is now distributed directly to the individuals in need. However, our letter dated October 2, 2007, previously advised the Organization that it was not able to disburse funds to non-qualified donees, "in this case the poor," and in its response dated October 22, 2007, the Organization claimed it had already implemented a change to directly provide food baskets instead of disbursing funds to individuals that are not qualified donees, and run a soup kitchen, which the current audit proved false. Also, on June 5, 2007, the Organization signed a Compliance Agreement with the CRA stating it would not gift funds to non-qualified donees, and yet it continued to do this as its focus by transferring funds overseas for re-distribution as grants to individuals and to a third-party purportedly running a soup kitchen and delivering food baskets on its behalf in the absence of appropriate documentation. Accordingly, the Organization has failed to substantiate its claim that it has corrected its repeated non-compliance with the Act. Based on the information provided to the CRA, the Organization failed to exercise direction, control, and supervision over the application of its funds by disbursing funds to non-qualified donees.

Conclusion:

Under section 149.1(1), a charitable organization must devote all of its resources to charitable activities it conducts itself. Under paragraph 168(1)(b), the Minister may propose to revoke its registration if it devotes its resources otherwise than in accordance with the Act. Disbursing resources to non-qualified donees and failing to substantiate resources are devoted to its own charitable activities is not in accordance with the Act.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a donation receipt where there is no gift, no donative intent, or the information on the receipt that is false is not in accordance with the Act.

Overall, it is the CRA's view that the Organization issued donation receipts not in accordance with the Act and its Regulations, and failed to manage and control its funds, including those transferred to a non-qualified donee, in contravention of the Act. Therefore, there are grounds for revocation of the Organization's charitable status under section 168(1)(b) and 168(1)(d).

Issue: Failure to maintain adequate books and records

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

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

In addition, subsection 230(4) also states "Every person required by this section to keep 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;⁹
- 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;¹⁰ and
- 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.¹¹

Travel Expenses

As previously stated, based on our audit findings, in 2009, the Organization incurred an expenditure of \$39,533 of travel expenses to a director for the years 2007 to 2009. The Organization did not provide sufficient documentation to support the payments were incurred for activities of the Organization.

In its representations, the Organization included correspondence received from its director, Rabbi Zirkind, describing his travel expenses for Organization business. The representations state that amounts per kilometre used to calculate the amount of reimbursement were based on the CRA's published amounts for reasonable automobile allowance rates per kilometre, and distances travelled and amounts claimed were not unreasonable, given the director's modest salary.

It remains the CRA's position that documentation must be maintained and made available to the CRA upon request to substantiate expenditures including travel claims. It is not sufficient to provide the director's summary of travel costs with no associated documentation (for example, proof of travel to Israel). The inability of the Organization to substantiate its travel expenses represents a deficiency in its books and records.

Fundraising expenditures

In 2008 and 2009, the Organization incurred fundraising expenditures, purportedly making cheque payments to individuals for redistribution to students to raise funds by telephone. However, the Organization failed to provide documentary proof that the students received the purported cash payments and failed to issue T4 or T4A slips.

⁹ See *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

¹⁰ *Ibid* at para 39. 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.

¹¹ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

In its representations, the Organization stated that the students worked on a part-time basis; a breakdown of their names, hours, and rates was provided to the CRA for our consideration; as no individual student received more than \$500 in a year, no T4 or T4A slip was required in accordance with the signed Compliance Agreement with the CRA; cheques were issued to supervisors and students paid in cash; and the records provided to the CRA were sufficient to justify what the Organization considered to be comparable to petty cash payments.

The CRA does not agree with the Organization's assessment that it was not required to issue T4 statements to the students, as they served as part-time employees, not subcontractors. Furthermore, the Organization provided no alternative proof of payment. Accordingly, its failure to substantiate these fundraising-related expenditures represents a deficiency in its books and records.

Board of Directors

Our previous correspondence also stated our concern that the Organization appeared to have fabricated meeting minutes dated June 30, 2009 and June 4, 2010 to appease the CRA's request for such documentation during the audit. In this regard, the CRA contacted the Organization's purported directors, [REDACTED], and [REDACTED]. Both individuals stated they had no active involvement in the Organization and [REDACTED] had not attended the meetings for which minutes provided to the CRA described him as an active participant.

In its May 6, 2016, representations, the Organization stated that the CRA's opinion was inconclusive, and that it had undergone a change in directors in 2011, providing a copy of the related extract from the *Registraire des entreprises* in Quebec, as proof of this change. However, the Organization did not directly refute the audit finding that it appears to have provided the CRA with false information about its directors and false documentation of meetings that did not occur. Therefore, the CRA maintains its position that the Organization appears to have fabricated false documentation of meeting minutes and provided such false documentation to the CRA for the purposes of its audit review.

Conclusion:

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

Issue: Failure to file an accurate information return in prescribed form

Subsection 149.1(14) of the Act states that:

Every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.¹²

The CRA audit determined that the Organization was improperly completing its T3010 returns, in that many of the items reported were incorrectly identified or omitted. For the periods ending on December 31, 2008, and December 31, 2009, this included the following:

- For 2008 and 2009, as Mr. Zalman Zirkind's time was primarily devoted to fundraising activity, his salary should have been included in the Organization's calculation of its fundraising expenses, and removed from being reported amongst its charitable expenditures. We concluded that amounts of \$33,230, and \$31,525, respectively for 2008 and 2009, should have been added on line 5020, for Total fundraising expenditures included in line 4950.
- For 2009, the amount representing the total paid to individuals conducting telephone solicitation on the Organization's behalf (\$7,457) should also have been included in the Organization's calculation of its fundraising expenditures on line 5020.
- For 2009, line 4950, total expenditures before gifts to qualified donees, was not completed correctly. The total of lines 5000 to 5040 must match with the total on line 4950.
- The directors names listed on the form were not accurate. As described above, [REDACTED] and [REDACTED], informed us that they did not serve as directors of the Organization.
- As the Organization did not substantiate that its transfers of funds to its agents and other non-qualified donees were used in charitable activities, it has not accurately reported its expenditures on charitable activities in its Form T3010.

¹² *Opportunities for the Disabled Foundation v MNR*, 2016 FCA 94 at paras 48-51.

In its representations, the Organization states that it disagrees that █████ Zirkind's salary should have been accounted for amongst its fundraising expenses, and that his salary was appropriately allocated because he was directly involved in all of the Organization's charitable activities. The Organization further submits that the CRA's related concerns are not sufficient to serve as grounds for the revocation of its charitable registration.

Conclusion:

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return when required under the Act.

It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

Section 149.1 Qualified Donees

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; or
- (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.

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;
- (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 (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;
- (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; and
- (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.

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

Where a registered charity or a registered Canadian amateur athletic association

- (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 as such,
- (c) fails to file an information return as and when required under this Act or a regulation,
- (d) issues a receipt for a gift or donation 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 or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration

Where the Minister gives notice under subsection (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,
- (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, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,

the person in a case 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), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), 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),
- (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), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the 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.

Section 188: Revocation tax

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 registered charity

- (a) 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;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) 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.

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) Transfer of property tax

Where 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 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 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.