



September 8, 2022

REGISTERED MAIL

Leslie Brandlmayr
Director
HSEF Renaissance Academy
1250 - 1500 W. Georgia St.
Box 62
Vancouver, BC V6G 2Z6

BN: 88520 5427 RR0001
File #: 3007459

Dear Leslie Brandlmayr:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated October 25, 2018 (copy enclosed), in which HSEF Renaissance Academy (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from December 1, 2009, to November 30, 2015. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated January 31, 2019. Your reply has not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained below.

Issuing official income tax receipts not in accordance with the Act – Lack of donative intent

It is the CRA's position that shares received by the Organization did not constitute a gift at law because the primary motivation of the donors was not to enrich the Organization but rather to participate in a series of private tax planning arrangements. This combined with the inflated tax credits and other benefits received by the donors, lack the requisite donative intent to be considered gifts.

Organization's response:

The Organization's response disagreed with the CRA's position and has ignored "the statutory provision in subsection 248(30) which deals with intention to give and says that the advantage can be 80% of the fair market value of the transferred property."

CRA's response:

Under common law, it is generally considered that a transfer of property is not a gift unless the donor is impoverished by the transfer to the benefit of the donee and it is the donor's intention to enrich the donee without consideration. We have considered and reviewed the application of subsection 248(30) and it is our position that it does not apply to this series of transactions. Subsections 248(30), (31) and (32) were added to the Act to clarify the circumstances under which taxpayers and donees may be eligible for tax benefits under the Act in respect of the impoverishment of a taxpayer in favour of a donee. It is generally accepted that the tax benefit available to a taxpayer, by way of a charitable donation deduction or credit, is not considered an advantage or benefit that would reflect a lack of donative intent on the part of a taxpayer. However, there may be circumstances where the intention of a taxpayer to make a gift is in doubt because of the combination of tax and other benefits to the taxpayer. If the primary motivation of a taxpayer for entering into a transaction or series of transactions is to return a profit to the taxpayer by way of a combination of tax and other benefits, as is the CRA's position in the case of the Organization, the taxpayer may not be impoverished by the transfer of property to a charity. Subsection 248(30) is not intended to allow a taxpayer to profit by the making of a gift.

Issuing official income tax receipts not in accordance with the Act – Fair market value (FMV)

The audit found that based upon a review by the CRA's Business Equity Valuations Unit (BEV), even though the shares donated to the Organization were traded on a listed stock exchange, the volume of shares donated far exceed the daily average volume of shares traded. As a result, were a person to sell the specified number of shares on the open market at once, it would have saturated the market, thereby causing the share price to decrease. The lower share price is a result of a block discount related to the high volume of shares donated at once. Consequently, the official donation receipts issued by the Organization for the shares donated during the audit period should have been issued at significantly lower values than they actually were.

Organization's response:

The Organization is “emphatic that the ‘daily trading price’ represents the fair market value of a public security” and disagrees “that these transactions equate to flooding the market which would result in a lower trading price and a high volume transaction would result in a block discount.” The Organization also noted that the BEV report was not provided with our letter.

CRA's response:

The BEV report was provided to the Organization in the summer of 2019 and no further responses were submitted by the Organization.

The Act does not provide specific guidance in determining how a gift of public shares should be valued. A careful review of the facts of each situation should be made to

determine the fair market value. As a general rule, the CRA has accepted the use of the closing bid price of a share on the date it is received or the mid-point between the high and the low trading prices for the day, whichever provides the best indicator, given the circumstances, of fair market value on normal and active market trading. However, there are times when other factors may have to be taken into consideration in determining fair market value. The onus is on the charity to consider all of the factors when determining a share's fair market value. Following is a partial listing of the factors which could impact a share's FMV:

- the size of the block of shares in relation to the whole;
- the volume traded;
- the attributes of the shares;
- whether the donor had control or was a minority shareholder;
- whether there were any restrictions on the transferability of the shares; and
- whether the shares were thinly traded, which would require a review of trades over a longer period of time.

At this time, we have not received any additional facts or documentation that would indicate we have misunderstood or not considered all relevant information.

As a result, the Organization's representations have not alleviated our concerns and our position remains that it has issued official donation receipts not in accordance with the Act.

Failure to devote resources to charitable activities

The audit determined that the Organization devoted a significant portion of its resources to the non-charitable purpose of promoting private tax planning arrangements by issuing official donation receipts totalling \$7,230,999 for non-cash gifts. When these resources were disposed of, they were sold at a fraction of their tax-receipted values. Given the limited activities outside of this, it is reasonable to conclude that the receiving and issuing official donation receipts for these shares was orchestrated for the purpose of earning tax credits for the donors with the Organization's directors complicit in the facilitation of these arrangements. As a result, the Organization has been operated and managed in a manner that is contrary to the purposes for which it was registered.

Organization's response:

The Organization provided that:

- an investment portfolio of publicly traded shares does not always produce income but it had anticipated that its holdings would increase in value;
- it "was operating on the understanding that it had a large disbursement quota excess carry forward and it was applying to the disbursement quota excess to the shortfalls of the years under the current audit;" and
- the CRA's determination of non-arm's length relationships was subjective.

CRA's response:

The Organization has not provided any new information, explanations or documentation to cause us to change the position described in our letter. Nowhere in the Organization's records or submissions is there documentation of a discussion of the risk of accepting these shares as gifts or for what reasons it anticipated that its investment holdings would increase in value. It is reasonable to conclude that prudent management of the Organization would entail an analysis of the risk associated with the acceptance of the sheer volume of shares it did as well as the historical stock price. For the Organization not to have conducted such an analysis, or sought the assistance of a professional advisor as it had with its legal and accounting affairs, demonstrates the Organization has acted in favour of its donors rather than its own charitable interests.

The determination of whether two parties are at arm's length can be found in subsection 251(1) of the Act. It is a question of fact whether persons not related to one another are, at a particular time, dealing with each other at arm's length. As the Organization's sole member is [REDACTED] well-known in the charitable sector and there are specific provisions of the Act relating to transactions among non-arm's length persons, this should have been a consideration in the operation of the Organization. Again, the Organization did not provide an explanation or additional information to change our position in this regard.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization issued official income tax receipts for amounts in excess of a property's fair market value, and failed to devote resources to charitable activities carried on by the Organization itself. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated October 25, 2018, and pursuant to subsections 168(1) and 149.1(2) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

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

Business number
885205427RR0001

Name
HSEF Renaissance Academy
Vancouver BC

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

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

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

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

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

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

Consequences of revocation

As of the effective date of revocation:

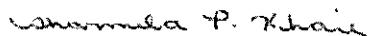
- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also

be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at canada.ca/charities-giving;

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

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

Yours sincerely,



Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A, Relevant provisions of the Act
- CRA letter dated October 25, 2018
- Organization's representations dated January 31, 2019

c.c.: Mathew Caunt

APPENDIX A

Qualified Donees

149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

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

149.1 (2) Revocation of registration of charitable organization

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

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

149.1 (4.1) Revocation of registration of registered charity

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

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

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

168 (2) Revocation of Registration

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

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

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

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

168 (4) Objection to proposal or designation

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

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

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

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

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

$$A - B$$

where

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

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

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

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

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

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

188 (1.2) Winding-up period

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

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

188 (1.3) Eligible donee

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

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

(ii) that is not the subject of a suspension under subsection 188.2(1),

(iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,

(iv) that has filed all information returns required by subsection 149.1(14), and

(v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

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

- (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
- (ii) filed all information returns required by or under this Act to be filed on or before that time.

188 (3) Transfer of property tax

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

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

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

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

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

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

188 (5) Definitions – In this section,

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

$$\mathbf{A - B}$$

where

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

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

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

$$\mathbf{A - B}$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

189 (6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

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

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

189 (6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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



REGISTERED MAIL

October 25, 2018

Ms. Leslie Brandlmayr
Director
HSEF Renaissance Academy
1250 - 1500 W. Georgia St.
Box 62
Vancouver, BC V6G 2Z6

BN: 88520 5427 RR0001
File #: 3007459

Dear Ms. Brandlmayr:

Subject: Audit of HSEF Renaissance Academy

This letter results from the audit of the HSEF Renaissance Academy (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from December 1, 2009, - November 30, 2015.

On October 25, 2018, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Issuing official income tax receipts not in accordance with the Act	110.1, 118.1, 149.1(2), 168(1)(d) Reg. 3500, 3501(1), and 3501(1.1)
2.	Failure to devote resources to charitable activities	149.1(1), 149.1(3), 149.1(4.1)(a), 168(1)(b)

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

Please note that the findings outlined below relate to our previous audit for the period December 1, 2004, to November 30, 2008, and, our current audit for the period December 1, 2009, to November 30, 2015.

Archon Shares (reviewed in prior audit):

- A total of 16,063,637 public shares of Archon Minerals Ltd. (Archon) with a total value of \$30,520,910 were donated to Theanon Charitable Foundation (Theanon) on December 31, 2001.
- An official donation receipt was issued to Stewart Blusson in the amount of \$30,520,910 (16,063,637 @ \$1.90/share).
- The tax-receipted amount was based on the share's exchange trading price on December 31, 2001, of \$1.90/share.
- Theanon gifted the shares to the Organization on January 10, 2002, as reported in Theanon's T3010 for the year ending April 30, 2002.
- Theanon and the Organization were related through a common director (Blake Bromley).
- An Option Agreement dated January 8, 2002, between Mr. Blusson and the Organization granted Mr. Blusson an irrevocable option to purchase any and all of the Archon shares before November 30, 2005.
- Mr. Blusson exercised the option to purchase the Archon shares on July 1, 2005, for \$31,324,000 at the listed price of \$1.95/share (16,063,637 @ \$1.95/share), which created an amount due from Mr. Blusson.
- The Organization purchased a royalty interest (i.e. future revenue) in a diamond mining area in the Northwest Territories known as "Two Misery Pipes" from Mr. Blusson on July 1, 2005, which created an amount due to Mr. Blusson. The royalty interest was valued at \$31,300,000. Note: The Organization was not provided with an independent appraisal of the fair market value of the royalty interest.
- A Debt Offset Agreement dated July 19, 2005, between Mr. Blusson and the Organization offset the amounts owed by each party resulting from the share purchase by Mr. Blusson, and the purchase of the royalty interest by the Organization (i.e. a wash).
- As the legal owner of the royalty interest valued at \$31,300,000, the Organization then gifted the royalty interest to the Stewart & Marilyn Blusson Foundation on August 17, 2005, as reported in the Organization's T3010 for the year ending November 30, 2005.
- The Stewart & Marilyn Blusson Foundation and the Organization were related through a common director (Blake Bromley).

Eldorado Gold Shares (reviewed in current audit):

- A total of 50,000 public shares of Eldorado Gold Corporation (Eldorado) with a total received value of \$981,500, were donated to the Organization in a single donation on August 27, 2010.
- An official donation receipt was issued to Stewart Blusson in the amount of \$981,500 (50,000 shares @ \$19.63/share).
- The tax-receipted amount was based on the share's exchange trading price on August 27, 2010, of \$19.63/share.
- On December 17, 2010, the Organization disposed of 12,500 shares for \$231,250 in the market (12,500 @ 18.50/share).
- On January 16, 2011, the Organization disposed of 12,500 shares for \$218,750 in the market (12,500 @ \$17.50/share).
- On August 26, 2011 the Organization disposed of 25,000 shares for \$500,000 in the market (25,000 @ \$20.00/share).
- As a result of the dispositions of Eldorado shares, the Organization did not report any Eldorado shares on its Statement of Financial Position as at November 30, 2011. A \$41,000 loss on disposition was reported on its Statement of Operations.

Firebird Shares (reviewed in current audit):

- A total of 7,200,000 public shares of Firebird Resources Inc. (Firebird) with a total received value of \$4,320,000, were donated to the Organization in three donations on November 2, 2011.
- Official donation receipts were issued to:
 - [REDACTED] for \$720,000 (1,200,000 shares @ \$0.60/share)
 - [REDACTED] for \$1,800,000 (3,000,000 shares @ \$0.60/share)
 - [REDACTED] for \$1,800,000 (3,000,000 shares @ \$0.60/share)
- The tax-receipted amounts were based on the share's exchange trading price on November 2, 2011, of \$0.60/share.
- For the fiscal period ending November 30, 2011, (28 days after the shares had been donated) the Organization reported a write-down to market value of \$2,160,000 for the Firebird shares. The market value of the shares was reported at \$2,160,000 on the Organization's Statement of Financial Position, a decrease of 50% (\$2,160,000) from the shares' tax-receipted value of \$4,320,000.

- For the fiscal period ending November 30, 2012, the Organization reported a further write-down to market value of \$1,440,000 for the Firebird shares. The market value of the shares was reported at \$720,000 on the Organization's Statement of Financial Position, a decrease of 83% (\$3,600,000) from the shares' tax-receipted value of \$4,320,000.
- For the fiscal period ending November 30, 2013, the Organization reported a third write-down to market value of \$648,000 for the Firebird shares. The market value of the shares was reported at \$72,000 on the Organization's Statement of Financial Position, a decrease of 98% (\$4,248,000) from the shares' tax-receipted value of \$4,320,000.
- For the fiscal period ending November 30, 2014, the Organization reported a write-up to market value of \$36,000 for the Firebird shares. The market value of the shares was reported at \$108,000 on the Organization's Statement of Financial Position.
- For the fiscal period ending November 30, 2015, the Organization reported the disposition of all 7,200,000 shares in the market for \$36,000. A \$72,000 write-down to market value was also reported. As a result of the disposition, the shares were not reported on the Organization's Statement of Financial Position as at November 30, 2015.

Summary:

Donations (7,200,000 shares)	4,320,000
Less: Write-downs to market value	<4,320,000>
Plus: Write-up to market value	36,000
Less: Share disposition (7,200,000 shares)	<36,000>
Asset value at November 30, 2015	0

Clydesdale Shares (reviewed in current audit):

- A total of 2,500,000 public shares of Clydesdale Resources Inc. (Clydesdale) with a total receipted value of \$1,975,000, were donated to the Organization in a single donation on December 23, 2011.
- An official donation receipt was issued to [REDACTED] in the amount of \$1,975,000 (2,500,000 shares @ \$0.79/share).
- The tax-receipted amount was based on the share's exchange trading price on December 23, 2011, of \$0.79/share.
- For the fiscal period ending November 30, 2012, (less than a year after the shares had been donated) the Organization reported a write-down to market value of \$1,325,000 for the Clydesdale shares. The market value of the shares was

reported at \$650,000 on the Organization's Statement of Financial Position, a decrease of 67% (\$1,325,000) from the shares' tax-receipted value of \$1,975,000.

- For the fiscal period ending November 30, 2013, the Organization reported a write-down to market value of \$387,500 for the Clydesdale shares. The market value of the shares was reported at \$262,500 on the Organization's Statement of Financial Position, a decrease of 87% (\$1,712,500) from the shares' tax-receipted value of \$1,975,000.
- For the fiscal period ending November 30, 2014, the Organization reported a write-down to market value of \$112,500 for the Clydesdale shares. The market value of the shares was reported at \$150,000 on the Organization's Statement of Financial Position, a decrease of 92% (\$1,825,000) from the shares' tax-receipted value of \$1,975,000.
- For the fiscal period ending November 30, 2015, the Organization reported the following transactions:
 - it purchased an additional 3,000,000 Clydesdale shares from Charitable Impact Foundation Canada (CHIMP) for \$75,000 at the share's exchange trading price (3,000,000 @ \$0.025/share).
 - it disposed of 2,500,000 Clydesdale shares to [REDACTED] under signed agreement for \$62,500 (2,500,000 @ \$0.025/share)
 - it reported a write-down to market value of \$39,773 on the share sale to [REDACTED]
 - it reported a write up to market value of \$117,273 on its Clydesdale shares
 - as a result of the disposition, the Organization owned 3,000,000 shares valued at \$240,000 as reported on the Organization's Statement of Financial Position as at November 30, 2015.

Summary:

Donation (2,500,000 shares)	1,975,000
Less: Write-downs to market value	<1,864,773>
Plus: Write-up to market value	117,273
Plus: Share purchase (3,000,000 shares)	75,000
Less: Share disposition (2,500,000 shares)	<62,500>
Asset value at November 30, 2015 (3,000,000 shares)	240,000

SPT Shares (reviewed in current audit):

- A total of 1,040,000 public shares of SPT Sulphur Polymer Technologies Inc. (SPT) with a total received value of \$935,999, were donated to the Organization in five donations on December 31, 2014.
- Official donation receipts were issued to:
 - [REDACTED] for \$150,000 (166,667 shares @ \$0.90/share)

- [REDACTED] for (\$270,000 (300,000 shares @ \$0.90/share)
- [REDACTED] for \$216,000 (240,000 shares @ \$0.90/share)
- [REDACTED] for \$180,000 (200,000 shares @ \$0.90/share)
- [REDACTED] for \$119,999 (133,333 shares @ \$0.90/share)

- The tax-receipted amounts were based on the share's exchange trading price on December 31, 2014, of \$0.90/share.
- For the fiscal period ending November 30, 2015, (less than one year after the shares had been donated) the Organization reported a write-down to market value of \$243,360 for the SPT shares. The market value of the shares was reported at \$692,639 on the Organization's Statement of Financial Position, a decrease of 26% (\$243,360) from the shares total tax-receipted value of \$935,999. The Organization held all 1,040,000 shares in SPT as reported on its Statement of Financial Position as at November 30, 2015.

Summary:

Donations (1,040,000 shares)	935,999
Less: Write-down to market value	<243,360>
Asset value at November 30, 2015	692,639

Identified areas of non-compliance:

1. Issuing official income tax receipts not in accordance with the Act

It is our position that the Organization has contravened the Act by accepting and issuing receipts for transactions that do not qualify as gifts by participating in private tax planning arrangements. The Organization issued tax receipts totaling \$7,230,999¹ for donations of publicly traded securities. We have determined that the properties for which the tax receipts were issued were not a gift at law. The Business Equity Valuations area of the CRA reviewed the tax-receipted values which were used by the Organization for the donation of the Firebird, Clydesdale and SPT shares during the period 2011 to 2015. These valuations indicated that the tax receipted values for the donations of shares of Firebird Resources Inc., Clydesdale Resources Inc., and SPT Sulphur Polymer Technologies Inc. were grossly inflated.

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

¹ The Organization received gifts of shares in Firebird Resources Inc. (\$4,320,000), Clydesdale Resources Inc. (\$1,975,000), and SPT Sulphur Polymer Technologies Inc. (\$935,999), for which it issued official donation receipts.

It is of particular importance that the registered charity reports the correct value of the gift on its tax receipts. Given the potential uncertainty over their valuation, the Act stipulates that the fair market value (FMV) of a gift of non-cash property must be reported on an official donation receipt. The CRA recognizes the complexity of valuating non-cash property and recommends the use of an independent appraiser where a registered charity issues a tax receipt of significant value for a gift-in-kind. We recognize that appraisals are not required under the Act or its Regulations; however, it is our view that the onus remains with the charity to ensure the value assigned to non-cash gifts received is reflective of the factual fair market value of the goods being received. For property with a value in excess of \$1,000, we strongly recommend that the property be appraised by an independent third party.² The person determining the FMV of the item should be competent and qualified to evaluate the particular property being donated, as well as be knowledgeable about the marketplace for the specific property. They should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the Uniform Standards of Professional Appraisal Practice or the standards of the profession.

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

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

Lack of Donative Intent

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

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

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

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

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

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

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

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

Fair Market Value (FMV)

Regulation 3501(1.1)(h)(ii) requires every registered charity to report the FMV of a gift of property on an official income tax receipt.

The Business Equity Valuations (BEV) area reviewed the tax-receipted values which were used by the Organization for the donation of Firebird, Clydesdale and SPT shares. Valuations were completed to determine if the exchange trading prices of the shares, which were used for tax-receipting purposes, was reflective of the "actual" market value of the shares. Based upon this review, it was estimated that the FMV for the donated shares is as follows:

- Firebird - Donation receipts were issued for a total of \$4,320,000 for 7,200,000 Firebird shares. The FMV of the shares at the time of the donation is estimated in the range of \$406,220 to \$808,322. We will use the midpoint of the range, that being **\$607,300** (\$0.08/share), which represents the FMV of the shares on November 2, 2011. This results in a decrease to the receipted value of \$3,712,700.
- Clydesdale - Donation receipts were issued for a total of \$1,975,000 for 2,500,000 Clydesdale shares. The FMV of the shares at the time of the donation is estimated in the range of \$162,700 to \$324,600. We will use the midpoint of the range, that

being **\$243,650** (\$0.10/share), which represents the FMV of the shares on December 23, 2011. This results in a decrease to the received value of \$1,731,350.

- SPT - Donation receipts were issued for a total of \$935,999 for 1,040,000 SPT shares. The FMV of the shares at the time of the donation is estimated in the range of \$402,200 to \$502,061. Based on an analysis of the share's market activity, we will use the low end of the range, that being **\$402,200** (\$0.39/share), which represents the FMV of the shares on December 31, 2014, and results in a decrease to the received value of \$533,799.

Based upon the review by BEV, it was determined that even though the aforementioned shares were traded on a listed stock exchange, the volume of shares donated far exceeded the daily average volume of shares traded. As a result, if a person was to sell the specified number of shares on the open market at once, it would have saturated the market, thereby causing the share price to decrease. The lower share price is a result of a block discount related to the high volume of shares donated at once.

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

2. Failure to devote resources to charitable activities

We reviewed the charitable activity of the Organization as reported on its Registered Charity Information Returns (T3010) since its registration in 1998. We provide the following information:

- For the period 2000 - 2004, the Organization reported negligible revenue and charitable expenses.
- In 2002, Theanon gifted 16,063,637 Archon shares valued at \$30,520,910 to the Organization as reported on Theanon's T3010 for the year ending April 30, 2002. Theanon and the Organization were related through a common director, Blake Bromley. As a result of our review, it is our position that this transaction falls under paragraph 149.1(4.1)(d) in that the Organization failed to expend before the end of its next taxation year (2003) an amount that is no less than the fair market value of the property received, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length.

- In 2005, the Archon shares were sold to Stewart Blusson under a signed agreement.
- In 2005, the Organization reported total revenues of \$2,643,116 comprised of amounts received from other registered charities (\$830,000), interest and investment income (\$1,009,934), and net proceeds from the disposition of assets (\$803,182). None of the proceeds were expended for charitable purposes as the Organization only reported management and administrative expenses of \$2,696,198 on line 5010 in the T3010. In addition, the Organization reported specified gifts to qualified donees of \$31,300,000 on line 5070, however as detailed above, we do not view the transfer of the royalty interest to the Stewart & Marilyn Blusson Foundation as a charitable expenditure. Although it is a gift to a qualified donee, we view the Stewart & Marilyn Blusson Foundation as an organization that does not deal at arm's length with the Organization. As such, this gift should have been included in the calculation of the disbursement quota for 2005 and 2006. As per paragraph 149.1(4.1)(d) of the Act, the Minister may revoke the Organization in this situation.
- For the period 2006 - 2009, the Organization reported negligible revenues and charitable expenditures.
- For the period 2010 - 2015, the Organization reported tax-receipted income of \$8,212,500 on line 4500; however, no charitable expenditures were incurred. A gift was made to two qualified donees during that time totalling \$957,029; however, we believe that paragraph 149.1(4.1)(d) applies.

Our audit determined that the Organization has devoted a significant portion of its resources to private tax planning arrangements through the issuance of \$7,230,999 in receipts for Firebird, Clydesdale and SPT shares. Subsequent to the donation of these shares, the values decreased substantially, and the Firebird and Clydesdale shares which were disposed, were sold for a fraction of their tax-receipted values.³

It is our position that the Organization has operated for the non-charitable purpose of promoting private tax planning arrangements and has structured its affairs for the benefit of private persons to the detriment of the Organization's charitable mandate.

Trust law imposes on a registered charity's directors the obligation to properly manage the assets of a charity. While it is often difficult for directors to foresee whether an asset they propose to acquire on behalf of the charity will be a good investment, the rules of prudent administration require that they take reasonable steps to ensure that the investment is a wise one which will ultimately be favourable for the charity. It is our view the Organization's directors did not acquire the shares for investment purposes since

³ 7,200,000 Firebird shares were sold for \$0.005/share after having been receipted at \$0.60/share. 2,500,000 Clydesdale shares were sold for \$0.025/share after having been receipted at \$0.79/share.

the Organization received minimal investment income during the time the shares were held.⁴

Based on the Organization's limited activities outside of the private tax planning arrangements, a reasonable person could conclude that the acquisition of the Firebird, Clydesdale and SPT shares was entirely orchestrated for the purpose of earning tax credits for the donors. In our view, the Organization has not operated as a registered charity, but as a facilitator of private tax planning arrangements. Furthermore, the directors of the Organization were complicit in these arrangements, and as such, operated/managed the Organization in a manner that is contrary to the purposes for which it was constituted.

Additionally, it is our position that one of the reasons for these transactions was to avoid or unduly delay the expenditure of amounts on charitable activities; and therefore paragraph 149.1(4.1)(a) also applies.

As per subsection 149.1(1) of the Act, a charitable organization must be constituted and operated exclusively for charitable purposes. It is our position that the Organization engaged in private tax planning arrangements in order to confer significant tax benefits on private persons. Operating for the benefit of a private person is not a charitable purpose. As such, we believe there is sufficient grounds to revoke the charitable status of the Organization under paragraph 168(1)(b), 148.1(3)(b) and 149.4(4.1)(d) of the Act.

The Organization's options:

a) Respond

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

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

⁴ The Organization has reported investment income of \$8,500 on its investments for 2010/2011. No investment income was reported for 2012 to 2015.

b) Do not respond

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

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

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Sherri Davis, may also be reached at 250-363-3128.

Yours sincerely,

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

Telephone: 250-363-6338
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January 31, 2019

Audit Division
Vancouver Island and North Tax Service Office,
9755 King George Blvd.
Surrey BC V3T 5E1

Attention: John Dumalski, [REDACTED]

Dear Sirs:

RE: Administrative Fairness Letter to HSEF Renaissance Academy
BN: 88520 5427 RR0001 YOUR FILE NUMBER: 3007459

We write in response to the Administrative Fairness letter ("AFL") dated October 25, 2018 relating to the audit of the operations of HSEF Renaissance Academy (the "Organization") for the period December 1, 2009 to November 30, 2015.

We will confine our responses to the areas of non-compliance set out in the AFL which relate to the current audit.

Issuing official income tax receipts not in accordance with the Act

The AFL states that the "Organization has contravened the Act by accepting and issuing receipts for transactions that do not qualify as gifts by participating in private tax planning arrangements. The Organization issued tax receipts totaling \$7,230,999 for donations of publicly traded securities. We have determined that the properties for which the tax receipts were issued were not a gift at law. The Business Equity Valuations area of the CRA reviewed the tax-receipted values which were used by the Organization for the donation of the Firebird, Clydesdale and SPT shares during the period 2011 to 2015. These valuations indicated that the tax receipted values for the donation of shares of Firebird Resources Inc. Clydesdale Resources Inc. and SPT Sulphur Polymer Technologies Inc. were grossly inflated."

To begin, characterizing the tax-receipted values as 'grossly inflated' is a bold statement and inappropriate to include in an AFL which did not provide the Organization with any working papers or supporting documentation of the analysis for the BEV findings which has led to the characterization of the tax receipted values for the donation of shares as *grossly inflated*.

The AFL further states that "based upon the review by BEV, it was determined that even though the aforementioned shares were traded on a listed stock exchange, the volume of shares donated far exceeded the daily average volume of shares traded. As a result, if a person was to sell the specific number of shares on the open market at once, it would have saturated the market, thereby causing the price to decrease. The lower share price is a result of a block discount related to the high volume of shares donated at once."

The Canada Revenue Agency (CRA) states that fair market value ("FMV") "is normally the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are knowledgeable, informed, and prudent, and who are acting independently of each other." The BEV valuation primarily relies on the assumption that these transactions equate to flooding the market which would result in a lower trading price and a high-volume transaction would result in a block discount. We disagree that the valuation of shares is best determined by assuming that this transaction should be viewed as if these shares flooded the market on a single day triggering a feeding frenzy that would result in a fire-sale price. We also disagree that based on a large volume sale, a block discount must necessarily apply. It is difficult to argue (or for CRA to defend for that matter) the BEV analysis considering it is based on an event that didn't happen. Further, both CRA and the sector use the trading price of publicly traded shares as an acceptable valuation and reasonable practice. It is difficult to fathom how any well-informed buyer or seller or donor or donee could better determine a valuation than by using the trading price of the day and awareness of the historical trading profiles or how any alternative valuation based on an event that didn't happen or on future valuations that were not available at the time of the donation could be considered more valid or more reasonable.

It is also necessary to consider the fact that the Organization will not fully realize the value of property it holds until such time as it divests itself of the property. Liquidating at a loss is not necessarily prudent and for investments still held by the Organization, a book loss or write-down is moot. It is difficult to determine when it is prudent and in the best interests of the Organization to sell shares that have lost value. We cannot disagree that hindsight would be very helpful as sometimes, the best decision is to sell and 'cut your losses' and other times, it is perhaps best to hold the shares for the long-term. The Organization did sell the Firebird shares and suffered a loss. However, during the audit period, the Organization retained the majority of the Clydesdale shares and the SPT shares. You have noted that the shares were written down in the audit years but an unrealized loss or gain, is exactly that – unrealized. Further, it should be noted that the write-downs shown on the financial statements at each fiscal year end reflect the trading price of the shares on the final day of the fiscal year. The Organization will only fully realize the value of property when it sells its share holdings or gifts the shares to another Qualified donee and quite likely, the valuation of the shares on such transactions would be determined by the trading price of the shares and recorded in the financial statements accordingly.

Further, I was legal counsel to a different donor (Donor A) who donated a large block of publicly traded shares to a registered charity. CRA was approached and asked whether the Official Donation Receipt (the "ODR"), could have a higher value than the trading price because of the break-up value. CRA said that the ODR should use the trading price on the day of the donation. Consequently, it is evidence of both prejudice and bias that a donor should be maligned as "participating in a private tax planning arrangement" because the ODR was not based upon an appraisal.

The AFL alleges that the transfer was "not a gift at law." The standard of review of questions of law is "correctness". The AFL states:

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

The AFL makes no allegation that the property was not voluntary and freely given. The Organization undoubtedly received the property. CRA's statement of the law is that the transaction may not result in any advantage to the donor. This statement of law incontrovertibly fails the correctness test because the ODR is required by ITA 3500(1)(h.1) to include "a description of the advantage, if any, in respect of the gift and the amount of that advantage". Also, given that the ITA contains a statutory definition of "advantage",

It is difficult to understand CRA's interpretation of ITA ss. 248(32) in the context of the AFL's test of why the transfer was "not a gift at law".¹

The AFL cites Woods J listing the four requisite elements of a "gift" in *Coombs et al v. The Queen*, 2008 DTC 4004, as indicia of the taxpayer having "a donative intent". The AFL does not allege that the donor failed to meet a single one of the four tests so it is unclear why this jurisprudence establishes a lack of donative intent.

The AFL also cites *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 as authority for the legal proposition "that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor". CRA is entirely ignoring the statutory provision in subsection 248(30) which deals with Intention to give and says that the advantage can be 80% of the fair market value of the transferred property.

Failure to devote resources to charitable activities

The AFL states "It is our position that the Organization has operated for the non-charitable purpose of promoting private tax planning arrangements and has structured its affairs for the benefit of private persons to the detriment of the Organization's charitable mandate." The Organization's mandate is to encourage donors to make gifts to fund qualified donees. The AFL does not explain as to what the private tax planning arrangement consisted of and why the Organization is not in compliance with the Act.

The AFL also reports that "the Organization's directors did not acquire the shares for investment purposes since the Organization received minimal investment income during the time the shares were held." We trust you can appreciate that an investment portfolio of publicly traded shares does not always produce income. Further, the Organization anticipated that its holdings would increase in value.

The AFL also states that in CRA's view, one of the reasons for 'these transactions was to avoid or unduly delay the expenditure of amounts of charitable activities'. To begin, we are not clear as to what transactions 'these transactions' reference. However, we advise that the auditor was fully aware that the Organization was operating on the understanding that it had a large Disbursement Quota excess carry forward and it was applying to the disbursement quota excess to the shortfalls of the years under the current audit. The CRA's determination that the Organization did not have a disbursement quota excess has not been fully addressed. Accordingly, an education letter is reasonable.

The AFL also reports that as "per paragraph 149.1(4.1)(d) of the Act, the Minister may revoke the Organization in this situation." We understand that 'this situation' is based on a CRA determination of non-arm's length relationships that have not been fully addressed or documented. This determination is not only subjective, it is also a determination of CRA subsequent to the audit years. At the very least, because the determination is based on a subjective determination of relationships between parties, the reasonable response is an education letter.

CONCLUSION

To summarize, the Organization makes note of the following concerns set out in the AFL:

1. The absence of the statutory basis for revoking the charitable status because of "participating in a private tax planning arrangement" because this is not identified in the statutory provisions cited

in the AFL.

2. CRA taking the position that it has the power to revoke based upon non-compliance with CRA's administrative policies absent an express statutory authority for revocation.
3. CRA's position that it is not reasonable to value a donation of publicly traded corporations by the trading price of the date of the donation.
4. CRA's position that future values upon disposing of publicly traded shares is relevant to the valuation of the official donation receipt issued to the donor based on the trading price on the day of the gift of the shares.
5. Given that the ITA contains a statutory definition of "advantage", CRA's interpretation of ITA ss. 248(32) in the context of the AFL's test of why the transfer was "not a gift at law".
6. The AFL cites Woods J listing the four requisite elements of a "gift" in *Coombs et al v. The Queen*, 2008 DTC 4004, as indicia of the taxpayer having "a donative intent". The AFL does not allege that the donor failed to meet a single one of the four tests so it is unclear why this jurisprudence establishes a lack of donative intent.
7. The AFL cites *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 as authority for the legal proposition "that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor". CRA is ignoring the statutory provision in subsection 248(30) which deals with intention to give and says that the advantage can be 80% of the fair market value of the transferred property.
8. Lack of jurisprudential or statutory authority provided in support of the purported statement of law in the AFL, "the intent of the donor must, in other words, be entirely donative".
9. The Organization being subjected to the BEV analysis without being provided with the BEV analysis and report so that the Organization could not fully respond to CRA's position.
10. CRAs position that the ODR, using the daily trading value, is grounds for any more than an education letter.

Summary

The AFL begins by stating that "the Foundation must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act." The AFL concludes by noting "we believe there is [s/c] sufficient grounds to revoke the charitable status of the Foundation under paragraph 168(1)(b) of the Act."

In response, the Organization notes that it is trite law that the decision of the Minister to send a notice of revocation under s-s. 168(1) must be arrived at in a manner enabling the Minister to create a record sufficiently complete to be used by [the Federal Court of Appeal] in deciding the appeal. This

The law further states that charities at risk of de-registration must be "fully informed of the case to be met and [be] given a full opportunity to respond."² Although the de-registration under paragraph 168(1)(b) is threatened by the AFL, the content of the AFL leaves me truly unable to understand the case to be met.

It is unfortunate that the views of CRA set out in the AFL have caused the Organization to feel that is necessary to respond in writing. The Organization is mindful of wasting its resources to respond in any further detail with the technical and legal arguments addressing the administrative positions adopted by CRA.

Further, in its 2018 fiscal year, the Organization intended to carry on charitable programs in furtherance of its charitable purposes but found that it does not have the operational capacity to do so.

Consequently, as a result of the realization that the Organization does not have the operational and resource capacity to carry out charitable activities and that the AFL lists revocation as a possible action, the directors made the decision to wind up its operations and therefore has requested voluntary revocation. We include a copy of the request for your files.

Sincerely,

Encl.

² Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 23.

HSEF Renaissance Academy
c/o Suite 1250 – 1500 West Georgia Street
Vancouver, BC V6G 2Z6
604.683.7006

January 30, 2019.

Canada Revenue Agency
Charities Directorate
Ottawa, Ontario
K1A 0L5

Dear Sirs:

**Re: HSEF Renaissance Academy (the "Charity")
Business Number 885205427 RR0001
REQUEST FOR VOLUNTARY REVOCATION**

The members and directors of the Charity have determined that they are not able to properly carry on the activities of the Charity as they lack the organizational capacity and human resources to implement programs. Accordingly, the members and directors have decided to request voluntary revocation of registered charity status for the Foundation. The Charity will shortly attend to submitting its T3010 and financial statements for the fiscal period ended November 30, 2018.

Accordingly, please commence voluntary revocation proceedings and provide us with the necessary forms related to the filings after revocation.

Sincerely,
HSEF RENAISSANCE ACADEMY
[REDACTED]
Per: **LESLIE BRANDLMAYR**
Director