



September 8, 2022

REGISTERED MAIL

Alan Peters
Director
John & Lorena Redekop Foundation
201 – 3550 Mt. Lehman Road
Abbotsford BC V4X 2M9

BN: 858128754 RR0001
File number: 3036513

Déar Alan Peters:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated November 1, 2019 (copy enclosed), in which the John & Lorena Redekop Foundation (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from May 1, 2012, to April 30, 2014. Specifically, the Foundation 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 15, 2020. Your reply has not alleviated our concerns with respect to the Foundation'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 Foundation did not constitute a gift at law because the primary motivation of the donors was not to enrich the Foundation but rather to participate in a series of private tax planning arrangements. This is based on the timing of the transactions, the parties involved and the lack of documentation retained by the Foundation to support its decision making. These actions combined with the tax credits and other benefits received by the donors, lack the requisite donative intent to be considered gifts.

Foundation's response:

The Foundation:

- Agreed that in some instances, the same number of shares were received by some of the donors but this does not negate the donative intent of the donors;
- Stated it undertook its own independent planning following the donation of shares;
- Identified the primary motivation for the donations of shares was to provide funds and assets to support the legacy of John Redekop and his family;

- Argued that the CRA did not take into account subsections 248(30) to (41) of the Act while also stating that the fair market value of the shares given up were equal to the assets received so no benefit was conferred; and
- Provided that the CRA's statement that the donations were made to non-arm's length recipients is largely irrelevant.

CRA's response:

The Foundation did not submit any additional documentation to support its assertions as to independent planning by the Foundation and the primary motivation for the donations of shares. In the absence of such documentation, the CRA is left with evaluating the materials presented during the audit, which concluded that the shares received do not constitute a gift.

To reiterate, in one series of transactions discussed in Appendix 2 of our letter dated November 1, 2019, on May 30, 2011, John Redekop Holdings Ltd. donated 490,992 shares to the Foundation and received an official donation receipt for \$8,150,467 and on December 28, 2011, John Redekop donated 22,000 shares and received a donation receipt for \$259,600. On April 17, 2012, the Foundation gifted all of these shares to Oak Tree Foundation and assigned a value of \$5,689,081. This means that the Foundation disposed of these shares at an amount \$2,720,986 less than their tax receipted value. Oak Tree Foundation subsequently disposed of these shares on October 25, 2012, to John Redekop at a value of \$5,694,211.

As a result of this series of transactions, John Redekop Holdings Ltd.:

- Effectively transferred its shares to John Redekop;
- Received a donation receipt for said transfer;
- Reduced the adjusted cost base of the shares now held by John Redekop; and
- By cycling the shares through registered charities, avoided the taxable capital gain that would have been associated with the disposition of shares to an individual.

Added to this, the fact that these transactions took place among non-arm's length parties is indeed relevant, as is their timing. John Redekop was a member and director of the Foundation and Oak Tree Foundation, an officer of the corporation whose shares were donated and controlled John Redekop Holdings Ltd. In addition, the Foundation has demonstrated it has the capacity to seek the assistance of legal and accounting professionals. Yet, nowhere in the Foundation's records or submissions is there documentation or discussion of accepting these shares, evaluating their risk or the purpose of gifting them to another registered charity less than one year after receiving them.

Further, subsections 248(30) to (41) 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 the 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 CRA's position in the case of the Foundation, the taxpayer may not be impoverished by the transfer of property to a charity. These subsections are not intended to allow a taxpayer to profit by making a gift. Therefore, it is our position that these subsections do not apply to the series of transactions the Foundation entered it.

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

Upon further review of the information concerning the value of the shares, the CRA has deemed that this is no longer an issue.

Failure to devote resources to charitable activities

The audit found that the Foundation structured its affairs for the benefit of private persons to the detriment of its charitable mandate, and as such, its resources were not devoted exclusively to charitable activities.

Foundation's response:

The Foundation argued that it made extensive donations in the years in question and all of the assets of the Foundation were used to support its charitable endeavours.

CRA's response:

As noted on page 9 of the Foundation's response, the vast majority of the Foundation's donations or gifts to other registered charities, were given to Oak Tree Foundation, a charity John Redekop is also a director of and also participated in the private tax planning arrangement. Further, given that the Foundation disposed of shares at an amount \$2,720,986 less than their tax receipted value, it cannot be said that all of the Foundation's assets were used to support its charitable endeavours.

Conclusion

The audit by the CRA found that the Foundation is not complying with the requirements set out in the Act. In particular, it was found that the Foundation issued official income tax receipts not in accordance with the Act and failed to devote resources to charitable activities. For these reasons, it is our position that the Foundation no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated November 1, 2019, and pursuant to subsection 168(1) of the Act, we hereby notify you of our intention to revoke the registration of the Foundation. By virtue of subsection 168(2) of the Act, 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) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
858128754RR0001	John & Lorena Redekop Foundation Abbotsford BC

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

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

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

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

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

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

Consequences of revocation

As of the effective date of revocation:

- a) the Foundation will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Foundation would not be allowable as tax credits to

individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

- b) by virtue of section 188 of the Act, the Foundation will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at canada.ca/charities-giving; and,
- c) the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Foundation may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

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

Yours sincerely,

Sharmila P. Khare

Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A, Relevant provisions of the Act
- CRA letter dated November 1, 2019
- Foundation's representations dated January 15, 2020

c.c.:



Qualified Donees

149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

(i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada that has applied for registration,

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(v) a foreign charity that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(b.1) a registered journalism organization,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

149.1 (4) Revocation of registration of private foundation

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

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1 (4.1) Revocation of registration of registered charity

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

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

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

168 (2) Revocation of Registration

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

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

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

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

168 (4) Objection to proposal or designation

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

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

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

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

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

A - B

where

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

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

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

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

188 (1.2) Winding-up period

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

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

188 (1.3) Eligible donee

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

(a) a registered charity

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

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

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

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

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

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

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

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

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

188 (3) Transfer of property tax

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

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

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

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

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

188 (5) Definitions – In this section,

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

189 (6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

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

exceeds

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

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

189 (6.3) Reduction of liability for penalties

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

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

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

189 (7) Minister may assess

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



REGISTERED MAIL

November 1, 2019

Mr. Alan Peters
Director
John & Lorena Redekop Foundation
201 - 3550 Mt. Lehman Road
Abbotsford, BC V4X 2M9

BN: 858128754 RR0001
File #: 3036513

Dear Mr. Peters,

Subject: Audit of John & Lorena Redekop Foundation

This letter results from the audit of the John & Lorena Redekop Foundation (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period from May 1, 2012 to April 30, 2014. Activities conducted prior to the audit period were also reviewed to assess legal compliance, and certain books and records were requested and reviewed dating back to the date of registration on July 17, 2007.

On October 29, 2019 the Foundation was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following 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), 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 Foundation an opportunity to respond and present additional information. The Foundation must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

Audit Findings:

The audit has raised serious concerns with respect to the Foundation's participation and involvement in transactions involving [REDACTED] shares. [REDACTED] is a public company whose shares are listed on the Toronto Stock Exchange (TSX).

These concerns relate specifically to the issuance of tax receipts and the circular manner of transactions for [REDACTED] shares which involved John Redekop, John Redekop Holdings Ltd. (BN 1026966697), John & Lorena Redekop Foundation (BN 858128754 RR0001) (the Foundation), Theanon Charitable Foundation¹ (BN 891106841 RR0001) (Theanon), Oak Tree Foundation (BN 829479666 RR0001) (Oak Tree), and Stewards' Charitable Foundation (BN 869179861 RR0001) (Stewards'). For the period July 17, 2007 to April 30, 2014, a total of 2,959,488 shares were donated or sold by John Redekop and John Redekop Holdings Ltd., to the four registered charities. Subsequent to their donation to the charities, the shares were gifted to Oak Tree and subsequently sold back to John Redekop.

Out of the total of 2,959,488 shares which were donated or sold to the four charities, the Foundation issued official donation receipts for 1,021,992 shares. These donations were made by John Redekop and John Redekop Holdings Ltd. John Redekop is a member and director of the Foundation, and the controlling shareholder of John Redekop Holdings Ltd.

The Foundation subsequently gifted Oak Tree all 1,021,992 shares which had been donated by John Redekop and John Redekop Holdings Ltd. At the end of the audit period, (April 30, 2014) the Foundation did not hold any [REDACTED] shares.

The details and sequence of the transactions are laid out in Appendix 1 and 2.

As detailed in the Appendices, the movement of [REDACTED] shares to and from the Foundation, depicts a series of circular transactions which moved all shares from John Redekop or John Redekop Holdings Ltd., through the Foundation to Oak Tree and then back to John Redekop.

Identified areas of non-compliance:

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

It is our position that the Foundation has contravened the Act by accepting and issuing official donation receipts for transactions that do not qualify as a gift. The Foundation has issued tax receipts for \$13,616,087 for donations of 1,021,992 shares of [REDACTED]. We have determined that the property for which the tax receipts were issued was not a gift at law and that the receipts were overvalued by \$7,150,987.

¹ Revoked on February 10, 2018 for cause.

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.

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 a tax 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 party². The person determining the fair market value of the item should be competent and qualified to evaluate the particular property being donated, as well as be knowledgeable about the marketplace for the specific property. They should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the Uniform Standards of Professional Appraisal Practice or the standards of the profession.

Additionally, we would like to inform you that certain amendments to the Act were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force May 13, 2005. As part of the amendments, 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 registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. We do not intend to apply these penalties given the serious nature of the non-compliance, as explained below.

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

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

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 [REDACTED] shares received by the Foundation did not constitute a gift at law. A gift must be a gift at law in order for it to be a valid charitable gift under section 118.1 of the Act.

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

[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 Foundation, but rather to facilitate the movement of the [REDACTED] shares from John Redekop and John Redekop Holdings Ltd., through the charities, back to the personal ownership of John Redekop. The transactions were non-arm's length in nature, and the control over the voting rights associated with the shares was never given up by John Redekop; as recognized by the [REDACTED] reporting in their Management Information Circulars filed with the Canadian Securities Administrators in SEDAR.

Specifically, the Information Circulars prepared and reported to SEDAR by [REDACTED] between 2007 and 2018 demonstrate that the overall number of shares controlled by John Redekop, includes the shares that are moved from John Redekop Holdings Ltd., through the Foundation to Oak Tree and then subsequently sold back to John Redekop. This report points out that John Redekop still controls directly or indirectly, the votes

associated with these shares.³ A summary of the April 23, 2014 [REDACTED] Information Circular is provided in Appendix 3.

The actions taken by the Foundation also indicate that the shares were not being held for their own benefit. The Foundation did not retain the donated shares for any significant amount of time, nor did the Foundation sell the shares. Any potential to earn future income, either by dividend or through cash value was not realized. Based on the timing of the transactions, the parties involved, and the lack of documentation to support these decisions, we have concluded that John Redekop and his company made donations of [REDACTED] shares to the Foundation fully expecting that the shares would be transferred to Oak Tree for eventual transfer back to himself. 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 inflated tax credit and other benefits received, lack the requisite animus donandi to be considered as a gift.

Fair Market Value (FMV) -

Regulation 3501(1)(h)(ii) requires every registered charity to report the fair market value of a gift of property on an official donation receipt.

The Business Equity Valuations (BEV) area of the CRA has reviewed the share values that were used by the Foundation for determining the value of the donated [REDACTED] shares which were based on the daily exchange trading price on the TSX. An equity valuation was necessary to determine if the market value of the shares used for donation-receipting purposes was reflective of the "actual" market value of the shares. Based upon the review by BEV, it was determined that even though the shares were traded on a listed stock exchange, the volume of shares donated far exceeded the daily average volume of shares traded. For example, if an individual was to sell the number of shares which had been donated in each instance on the open market at one time, this action would have saturated the market, thereby causing the share price to decrease. The lower fair market values estimated by BEV are a direct result of a block discount related to the high volume of shares which were donated at one time.

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 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 has issued donation receipts otherwise than in accordance with paragraph 168(1)(d) and the Regulations. For each reason identified above, there may be grounds for revocation of the Foundation's charitable status under paragraph 168(1)(d) of the Act.

³ Source - Information Circular for April 23, 2014.

2. Failure to devote resources to charitable activities

It is our position that the Foundation was operated for the non-charitable purpose of facilitating a private tax planning arrangement and/or benefit, and as such, its resources were not devoted to exclusively charitable activities. Furthermore, the Foundation structured its affairs for the benefit of private persons to the detriment of the Foundation'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 Foundation's directors did not acquire the shares for investment purposes since the shares were only held for brief periods of time, nor did the Foundation redeem the shares since they were all gifted to another registered charity or sold directly back to John Redekop.

Based on the Foundation's limited activities outside of the private tax planning arrangement, a reasonable person could conclude that the acquisition of the [REDACTED] shares, and the gifting of the shares to a charity, in which Mr. Redekop was a director, was entirely orchestrated for the purpose of earning tax credits and assisting Mr. Redekop in moving shares from his corporation back to himself. In our view, the Foundation has not operated as a registered charity, but as a facilitator of a private tax planning arrangement. Furthermore, the directors of the Foundation were complicit in the private tax planning arrangement, whereby these directors have operated/managed the Foundation in a manner that is contrary to the purposes for which it was constituted.

As per subsection 149.1(1) of the Act, a charitable foundation must be constituted and operated exclusively for charitable purposes. It is our position that the Foundation engaged in a private tax planning arrangement 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 Foundation under paragraph 168(1)(b) of the Act.

Failure to meet the disbursement quota

The Act requires private foundations to make a minimal disbursement each year equal to the disbursement quota. The calculation of the disbursement quota is contained in subsection 149.1(1) of the Act.

Our review determined the Foundation has made some gifts to qualified donees, however there is a disbursement quota shortfall. For the four fiscal periods the total disbursement quota shortfall is \$85,188.

As a result, the Organization has failed to comply with the disbursement quota requirements contained in the Act. Pursuant to subsection 149.1(4)(b) this is cause for the Organization to be revoked in the manner described in subsection 168(1) of the Act.

The Foundation's options:

a) Respond

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

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

b) Do not respond

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

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

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

Yours sincerely,

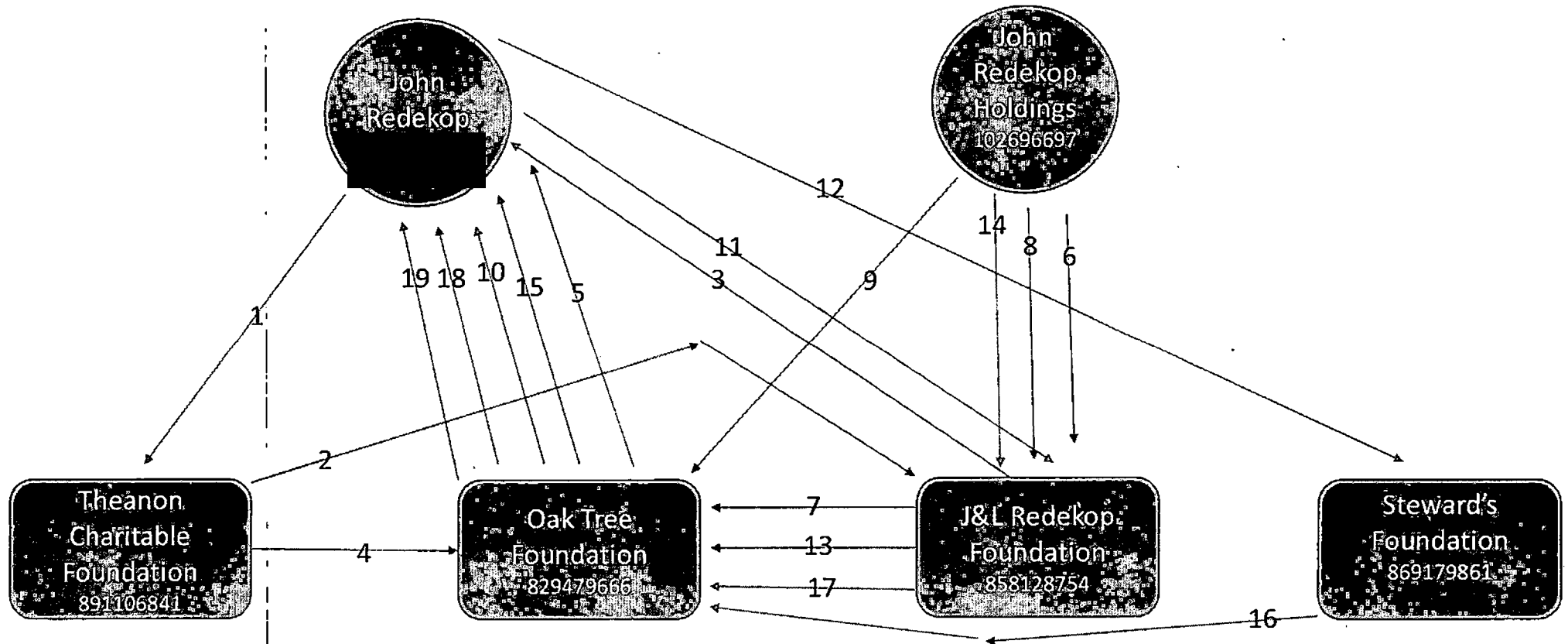
John Dumalski, [REDACTED]
Audit Division
Vancouver Island and North Tax Services Office

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

Attachments

cc: John Redekop, [REDACTED]

APPENDIX 1 - [REDACTED] SHARE TRANSACTIONS
December 1, 2007 – September 30, 2014



Appendix 2

██████████ SHARES

Explanation of Transactions

Common shares are listed on the Toronto Stock Exchange ("TSX").

1. December 1, 2007 - J. Redekop donates 703,496 shares of ██████████ to Theanon in two separate donations. ODR's issued for \$6,331,464. (9.00/share)

2. May 9, 2009 - Theanon gifts 703,496 shares of ██████████ to J&L Redekop Fdn valued at \$4,994,821. (7.10/share)

3. September 24, 2009 - J&L Redekop Fdn. transfers 703,496 shares of ██████████ to John Redekop valued at \$4,994,821 in an exchange of assets. (7.10/share)

4. March 25, 2010 - Theanon gifts 678,896 shares of ██████████ to Oak Tree Fdn valued at \$5,003,463. (7.37/share)

(Note: Filed T3010/T1236 for Theanon for YE April 30, 2010 reports \$7,332,076 was gifted to Oak Tree which included a cash gift of \$2,328,613. Gift of \$7,332,076 not identified as a designated gift on Theanon's T1236. On the date the gift was made Blake Bromley was a director of both Theanon and Oak Tree.)

5. March 25, 2010 - Oak Tree Fdn transfers 678,896 shares of ██████████ valued at \$5,003,463 to John Redekop in exchange of assets (promissory notes). (i.e. amounts are due from 4 corporations) (7.37/share)

6. July 27, 2010 - John Redekop Holdings donates 324,000 shares of ██████████ to J&L Redekop Fdn. ODR issued for \$3,152,520. (9.73/share)

7. October 1, 2010 - J&L Redekop Fdn gifts 324,000 shares of ██████████ to Oak Tree valued at \$3,434,400. (10.60/share)

(Note: Filed T3010/T1236 for J&L Redekop Fdn for YE April 30, 2011 reports \$4,507,283 was gifted to Oak Tree which included a cash gift of \$1,072,883. Gift of \$4,507,283 *was not* identified as a designated gift on J&L Redekop's T1236. During the course of the audit, the auditor was provided with an amended T1236 which indicated that the gift of \$4,507,283 *was* identified as a designated gift. The auditor was unable to locate the amended T1236 in the return file or the P/D file of J&L Redekop.)

8. May 30, 2011 - J. Redekop Holdings donates 490,992 shares of ██████████ to J&L Redekop Fdn. ODR issued for \$8,150,467. (16.60/share)

9. May 31, 2011 - John Redekop Holdings transfers 996,000 ██████████ shares to Oak Tree Fdn valued at \$16,533,600. Promissory note issued to John Redekop Holdings. (16.60/share)
(Note: John Redekop Holdings subsequently assigns promissory note to John Redekop.)

10. October 31, 2011 - Oak Tree Fdn transfers 400,000 shares of [REDACTED] to John Redekop valued at \$5,800,538. Amount due to John Redekop reduced. (14.50/share)

11. December 28, 2011 - John Redekop donates 22,000 shares of [REDACTED] to J&L Redekop Fdn. ODR issued for \$259,600. (11.80/share)

12. December 29, 2011 - John Redekop donates 238,000 shares of [REDACTED] to Stewards Fdn. ODR issued for \$2,796,500. (11.75/share)

13. April 17, 2012 - J&L Redekop Fdn. gifts 512,992 shares of [REDACTED] to Oak Tree Fdn valued at \$5,689,081. (11.09/share)

(Note: Filed T3010/T1236 for J&L Redekop Fdn for YE April 30, 2012 reports \$7,729,081 was gifted to Oak Tree which included a cash gift of \$2,040,000. Gift of \$7,729,081 was identified as a designated gift on J&L Redekop's T1236.)

14. July 20, 2012 - John Redekop Holdings donates 185,000 shares of [REDACTED] to J&L Redekop Fdn. ODR issued for \$2,053,500. (11.10/share)

15. October 25, 2012 - Oak Tree Fdn transfers 523,992 shares of [REDACTED] to John Redekop valued at \$5,816,311. Amount due to John Redekop reduced. (11.10/share)

16. February 26, 2013 - Stewards Fdn gifts 238,000 shares of [REDACTED] to Oak Tree Fdn valued at \$2,687,020. (11.74/share)

17. September 26, 2013 - J&L Redekop Fdn gifts 185,000 shares of [REDACTED] to Oak Tree Fdn valued at \$1,861,100. (10.06/share)

(Note: Filed T3010/T1236 for J&L Redekop Fdn for YE April 30, 2014 reports \$1,861,100 was gifted to Oak Tree. Gift of \$1,861,100 was identified as a designated gift on J&L Redekop's T1236.)

18. October 31, 2013 - Oak Tree Fdn transfers 523,000 [REDACTED] shares to John Redekop valued at \$5,625,120. Amount due to John Redekop reduced. (10.76/share)

19. September 30, 2014 - Oak Tree Fdn transfers 485,000 [REDACTED] shares to John Redekop valued at \$4,995,500 in an exchange of assets. ([REDACTED], promissory note) (10.30/share)

Summary of Share Transactions
December 1, 2007 - September 30, 2014

	No. of Shares	Value
██████ shares for which an ODR was issued to John Redekop	963,496	\$9,387,564
██████ shares transferred by John Redekop Holdings (ODR not issued)	996,000	16,533,600
██████ shares for which an ODR was issued to John Redekop Holdings	<u>999,992</u>	<u>\$13,356,487</u>
Totals	<u>2,959,488</u>	<u>\$39,277,651</u>
██████ shares transferred back to John Redekop	3,314,384	\$32,235,753

Appendix 3
SEDAR Information Circular - April 2014

..."To the knowledge of the directors and executive officers of the Company, as of April 9, 2014, the only persons or entities who beneficially owned, controlled or directed, directly or indirectly, Common Shares carrying 10% or more of the voting rights attached to all outstanding Common Shares, are as follows:

Name of Shareholder	Common Shares Held	Percentage
██████████ (Note 1)	██████████	██████████
John Redekop (Note 2)	██████████	██████████
██████████ (Note 3)	██████████	██████████

Note 1: Of these Common Shares, ██████████ Common Shares are held personally by ██████████ (including ██████████ Common Shares held by ██████████). ██████████ Common Shares are held by ██████████ and controlled by ██████████, 26,200 Common Shares are held by ██████████ and controlled by ██████████, and ██████████ Common Shares are held by ██████████, Trustee of ██████████ and controlled by ██████████.

Note 2: Of these Common Shares, ██████████ Common Shares are held personally by John Redekop (including ██████████ Common Shares held by ██████████), 1,147,000 Common Shares are held by Oaktree Foundation, a public foundation of which John Redekop is a director, and 185,000 Common Shares are held by John & Lorena Redekop Foundation, a private foundation of which John Redekop is a director.

Note 3: All of these Common Shares are held by ██████████, a company controlled by ██████████.

Appendix 4
Charity Directors/Members Listing

	<u>Directors</u>	<u>Members</u>	<u>Officers</u>
Stewards' Charitable Foundation -			
YE August 31, 2011 -	B. Bromley L. Brandlmayr C. Richardson		President
YE August 31, 2012 -	B. Bromley L. Brandlmayr C. Richardson		President
YE August 31, 2013 -	B. Bromley L. Brandlmayr C. Richardson		President
YE August 31, 2014 -	B. Bromley L. Brandlmayr C. Richardson		President
YE August 31, 2015 -	B. Bromley L. Brandlmayr C. Richardson		President
Oak Tree Foundation -			
YE October 31, 2010 -	B. Bromley J. Redekop A. Peters		President
YE October 31, 2011 -	B. Bromley J. Redekop A. Peters K. Sidhu S. Gosselin		President
YE October 31, 2012 -	J. Redekop K. Sidhu S. Gosselin		President

YE October 31, 2013 -	J. Redekop K. Sidhu S. Gosselin P. Sangha		President
YE October 31, 2014 -	J. Redekop S. Gosselin P. Sangha		President
YE October 31, 2015 -	J. Redekop S. Gosselin P. Sangha		President
YE October 31, 2016 -	J. Redekop S. Gosselin P. Sangha		President
YE October 31, 2017 -	J. Redekop S. Gosselin P. Sangha		President
John & Lorena Redekop Foundation -			
YE April 30, 2009 -	B. Bromley J. Redekop D. Landucci		President
YE April 30, 2010 -	B. Bromley J. Redekop A. Peters D. Landucci		President
YE April 30, 2011 -	B. Bromley J. Redekop A. Peters		President
YE April 30, 2012 -	B. Bromley J. Redekop A. Peters M. Caravetta		President
YE April 30, 2013 -	J. Redekop A. Peters		President

M. Caravetta

YE April 30, 2014 -

J. Redekop
A. Peters
M. Caravetta

President

YE April 30, 2015 -

J. Redekop
A. Peters
M. Caravetta

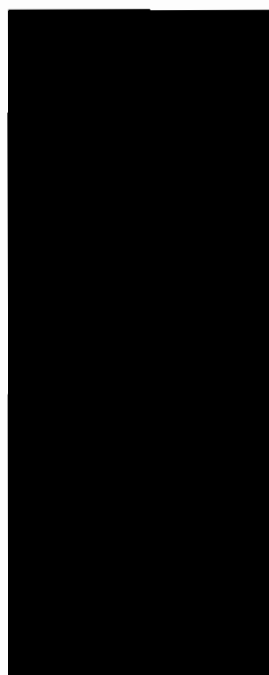
President

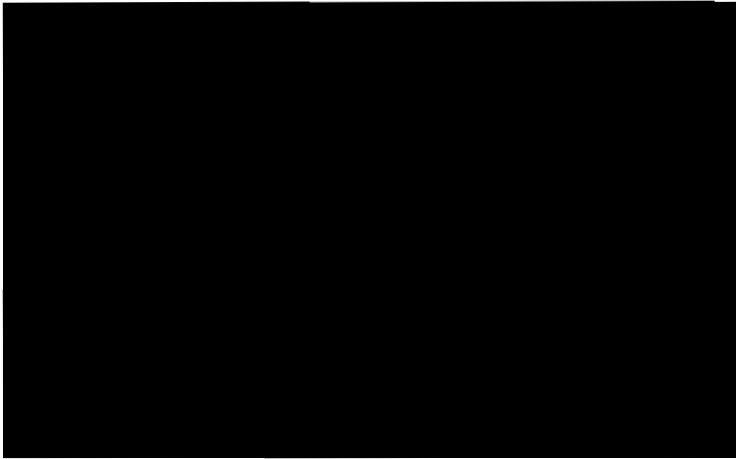
* As per Member Minutes.

Theanon Charitable Foundation -

YE April 30, 2010 -

B. Bromley
R. Kruse
C. Richardson





WITHOUT PREJUDICE

Private and confidential

Attention: Mr. John Dumalski
Audit Division
Vancouver Island and North Tax Services Office
Canada Revenue Agency
9755 King George Blvd.
Surrey, BC V3T 5E1

January 15, 2020

Dear Mr. Dumalski

John & Lorena Redekop Family Foundation
BN 85812 8754 RR0001
File #: 3036513

We are writing in reply to your letter in which you raise certain concerns around the activities of the John and Lorena Redekop Foundation in the period of May 1, 2012 to April 30, 2014.

Executive Summary

We note that the positions set out by the Canada Revenue Agency ("CRA") are not based on any strong factual foundation. Rather, unfounded assumptions and hypotheses appear to have been developed. It appears that the CRA is tainting its analysis due to other entities which are not the subject of this audit but with whom the taxpayers who are the subject of this audit had transactions with. We also note that CRA has set out 7 years of transactions and assumes them all to be preordained or connected. We note that CRA does not appear to respect that each legal entity has its own directing mind and purpose and that the role of an individual or entity must be respected depending upon their legal obligations. As set out in greater detail below, it is our view that the positions of the CRA are not well-founded.



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John & Lorena Redekop Family Foundation
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Relevant Facts

Before proceeding further, we have outlined the relevant facts upon which we have relied in preparing our reply.

1. John Redekop ("Redekop") is [REDACTED]
2. John Redekop Holdings Ltd. ("Holdings") is a Canadian-controlled private corporation, a Canadian resident for income tax purposes, and is a resident of British Columbia.
3. John and Lorena Redekop Foundation ("Foundation") is a Canadian resident for income tax purposes and is a resident of British Columbia.
4. The Foundation is a private foundation as that term is defined in subsection 149.1(1) of the Income Tax Act¹ (the "Act") and was registered on July 17, 2007.
5. The current Directors of the Foundation are:
 - Alan Peters
 - John Redekop
 - Kulraj Hundal
6. [REDACTED] is a public corporation, as that term is defined in subsection 89(1) of the Act, and is listed on the Toronto Stock Exchange under the ticker [REDACTED].
7. Throughout the period under examination, Redekop and Holdings (collectively, the "Donors") made donations of shares of [REDACTED] to the Foundation.
8. The Foundation made gifts of cash and publicly-traded securities to Oak Tree Foundation ("Oak Tree") throughout the period under audit.
9. Oak Tree is a public foundation of which Redekop is a director. There are numerous directors of Oak Tree and Redekop is but one.
10. The Foundation made a management decision, based on its disbursement quota ("DQ") needs, to divest itself of the shares of [REDACTED] and acquire assets that were sufficiently income-producing.
11. The Foundation sold its shares of [REDACTED] for fair market value ("FMV") consideration.
12. The sequence of transactions that the CRA has identified (see our Appendix 3) is provided for reference.

Issues

Issuing Official Income Tax Receipts Not in Accordance with the Act

You have indicated that the Foundation has contravened the Act by issuing donation receipts that are not reflective of the true FMV of the property donated, and have also suggested that the donations lack donative intent.

¹ All references to the Act or ITA refer to the Income Tax Act (Canada), 5th supp., R.S.C., as amended.

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We have responded to each of your claims below.

Lack of Donative Intent

It is widely understood that a charitable donation exists only when there is a true gift at common law. However, we dispute the CRA's position that the donation of the [REDACTED] shares to the Foundation lacked donative intent. The shares were gifted to the Foundation and the Donors reported the resulting income tax consequences and claimed, to which they were rightly entitled, a 0% inclusion rate on the capital gains resulting from the gift².

Holdings correctly claimed a 100% capital dividend account increase in respect of the non-taxable portion of the capital gain realized on the donation of the [REDACTED] shares.

The recipient charities took beneficial and legal title to the [REDACTED] shares that were donated. While it is agreed that, in some instances, the same number of [REDACTED] shares ultimately were received by some of the donors, this result does not negate the true donative intent of the donors as the donation was truly a gift at law.

Your references to *Webb v. R*³ and *Coombs et al v. R*⁴ fail to consider transactions that may occur after the donation has been completed. The Foundation received the [REDACTED] shares as a legitimate gift, having received share certificates bearing the Foundation's name, and consequently the Foundation undertook its own independent planning following the donation of the [REDACTED] shares.

While we do not generally dispute the statements in *Webb* and *Coombs et al*, those cases were decided before the enactment of subsections 248(30) to (41) of the Act. These amendments modify the common law such that the receipt of a benefit in respect of a transfer of property to a qualified donee no longer automatically precludes the existence of a gift under section 118.1 of the Act.⁵ The analysis in the CRA letter does not appear to have taken into account these recent amendments.

The Foundation recognized that the [REDACTED] shares did not, at the time, pay a sufficient dividend to satisfy the DQ. The Foundation made a management decision, independent of the donation of shares received from the Donors, to divest itself of the shares of [REDACTED] and acquire assets that were sufficiently income-producing to satisfy the DQ. This governance decision was undertaken with bona fide intentions, notwithstanding the fact that the Foundation was not dealing at arm's length with the Donors.

The FMV of the assets given up (being the [REDACTED] shares) had a FMV equal to the assets received. There was, consequently, no benefit received or conferred upon Redekop or Holdings as the FMV of the assets given in exchange for the [REDACTED] shares equaled that of the [REDACTED] shares. The essence of the transaction is that of a prudent, arm's length business dealing that occurred without any benefit or advantage conferred on any person or corporation.

The CRA has previously indicated:

² Paragraph 38(a.1) of the Act.

³ 2004 TCC 619, [2004] T.C.J. No. 453 at paragraph 16

⁴ 2008 DTC 4004

⁵ See *Cassan v Canada*, 2017 TCC 174 at paras 319-320. Subsections 248(30) to (41) of the Act were enacted in 2013 having effect for transactions after December 20, 2002.

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*"... a true gift is a voluntary transfer of real or personal property from a donor, who must freely dispose of his or her property, to a donee, who receives the property given. The transaction may not result directly or indirectly in a right, privilege, material benefit or advantage to the donor or to a person designated by the donor. To qualify, the donation must be in the form of an outright gift. Any legal obligation on the donor would cause the transfer to lose its status as a gift. Further, in order for an expenditure to be considered as gift, it must be made without conditions, from detached and disinterested generosity, out of affection, respect, or charity or like impulses, and not from the constraining forces of any moral or legal duty. The donee must have an unfettered right to use a donation as they wish."*⁶⁷

All of the above criteria have been met and as such, the gift of [REDACTED] shares by the Donors does, in fact, constitute a gift at law.

The primary motivation for the donations of the [REDACTED] shares was unequivocally not to enrich either of Redekop or Holdings, but in fact to provide funds and assets to support the charitable legacy of Redekop and his family.

Pages 4 and 6 of the CRA letter states that the donation was made to facilitate a reorganization of share ownership of [REDACTED]. In addition to these statements being factually inaccurate, being partly motivated to reorganize share ownership would not vitiate the gift. The Ontario Court of Appeal has rejected the argument that an overall motivation of an estate freeze vitiated a charitable gift, stating "[t]he *intention* respecting the transfer of shares was to do so gratuitously. The transfer was part of the corporate structure putting the estate freeze in place. And the estate freeze was the ultimate *motivation or purpose*".⁸ Similarly, the intention in this case was to make a gift to the Foundation. The fact that a taxpayer receives a tax receipt for their donation also does not automatically negate the existence of a gift.⁹

Non-Arms' Length Characterization

Furthermore, the CRA's statement that the donations were made to non-arm's length recipients is largely irrelevant. It is very common for families to establish private foundations and make donations to their own private family foundations. Very frequently, the directors of private family foundations are family members (and often, donors to the private family foundation), thus related to one another under paragraph 251(2)(a) of the Act, and pursuant to paragraph 251(1)(a) deemed not to deal at arm's length.

In such a situation, it would be unequitable to suggest that a donation from an individual to a private family foundation is invalid simply on the basis that the individual is either a director of the private family foundation, or related to any or all of the directors of the recipient private family foundation.

In fact, the entire basis of a private foundation is such that more than 50% of the directors and/or trustees are related to one another. The Act provides for this characterization and many interpretations, jurisprudence, and rulings have been published outlining the uses and functions of private foundations. It would be contrary to the spirit of the provisions

⁶ Ruling 9523913 - Whether a gift

⁷ Tech Interp 9631585 - Whether a gift?

⁸ *McNamee v McNamee*, 2011 ONCA 533 at para 34.

⁹ *Cassan v Canada*, 2017 TCC 174 at para 248

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surrounding private family foundations to imply that a family could not donate to a private family foundation that it managed.

Subsection 149.1(4) provides for the various situations in which a private foundation would or may be subject to revocation of registration. None of the provisions in paragraphs 149.1(4)(a) through (d) contemplate a situation where an individual who is not dealing at arm's length makes a donation to a private foundation.

The receipt of a gift by a private foundation from a donor, whether or not that donor is arm's length or non-arm's length, does not jeopardize the private foundation's registration. In the context of the Act, there are specific requirements for gifts of non-qualifying securities to be eligible for a charitable receipt. One of the requirements is that the donor deals at arm's length with the donee.¹⁰ The fact that there is no such requirement for publicly-traded securities supports that this consideration is not relevant in these circumstances.

Control of Voting Rights – SEDAR Filings

The CRA suggests that control over the voting rights of the [REDACTED] shares was not given up, and you have referenced the SEDAR Information Circular, dated April 2014, in Appendix 3 of your letter.

The requirements of a gift are that legal and beneficial title be transferred and those requirements do not refer to a transfer of "control". It is clear that the Foundation received legal title to the shares.

The requirements of SEDAR in respect of reporting voting control is not founded in tax law, nor should a SEDAR filing be used to ascertain whether voting control or beneficial ownership of publicly-traded securities has changed hands for income tax purposes.

The SEDAR Information Circular provided in Appendix 3 is produced by [REDACTED] as a result of National Instrument 51-102 "Continuous Disclosure Obligations", and produced pursuant to Form 51-102F5¹¹, and does not have any basis in tax law, nor is such disclosure contemplated in the Act or the Regulations thereto.

The requirement to disclose the information contained in the Information Circular is necessary for securities regulators, investors, and the general public to understand how and by what means certain individuals can have influence over a particular corporation. While Redekop was in fact a director of both the Foundation and Oak Tree, this by no means implies that Redekop unilaterally controlled the donated [REDACTED] shares. To the contrary, he was one of a number of directors of both the Foundation and Oak Tree, and consequently was not in any position to directly exercise control over the [REDACTED] shares donated to both of the Foundation and Oak Tree.

It is therefore inappropriate to arrive at a determination of tax law based on the requirements of securities regulators.

There is serious fault in the rationale that, because the holdings of the [REDACTED] shares by the Foundation and Oak Tree were disclosed in SEDAR, voting control of the [REDACTED] shares was not given up. As the share certificates were legally transferred, and new certificates were issued to the recipient charities, voting control did, in fact, change.

¹⁰ Subsection 118.1(19) of the Act.

¹¹ https://www.bccsc.bc.ca/Securities_Law/Policies/Policy5/Group/?group=51%20102

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Following a plain reading of Appendix 3, the following is noted:

"... 1,147,000 Common Shares are held by Oaktree Foundation, a public foundation of which John Redekop is a director, and 185,000 Common Shares are held by John & Lorena Redekop Foundation, a private foundation of which John Redekop is a director." (emphasis added)

The emphasized portions of the above excerpt are very relevant in understanding the ownership of the [REDACTED] shares, as well as the governance and structure of the Foundation.

The SEDAR filing clearly indicates several key facts related to the Foundation:

1. The Foundation is a private foundation.
2. Redekop is a director

We respectfully disagree with your assertion that voting control for the purposes of determining whether a gift has been made can be defined by regulatory filing and ask that you reconsider this position.

Control of Voting Rights – Management of Foundation

The Foundation is a private foundation with 3 directors. More than 50% of the directors of the Foundation do not deal at arm's length with other directors, or with the Foundation itself. However, this fact should not imply that voting control of the [REDACTED] shares had not changed to the Foundation.

Furthermore, and in respect of Oak Tree, Oak Tree is a public foundation with many directors. Redekop was but one of the directors of Oak Tree and did not have exclusive and unilateral authority to transact on behalf of Oak Tree. Oak Tree is a public foundation, having more than 50% of directors dealing at arm's length with Oak Tree and with other directors, and where decisions are made by a simple majority vote.

Consequently, Oak Tree is not controlled by Redekop, nor anyone related to Redekop. It is impossible, then, for Redekop to control Oak Tree given its status as a public foundation. The fact that Redekop was a director of the Foundation and Oak Tree should not, in and of itself, render the donation invalid. Understanding that a determination of arm's length status is a question of fact, it is not logical to conclude that independent directors of a public foundation would collude in such a manner as the CRA has described without clear facts.

The rationale applied by the CRA in this issue could incorrectly extend to any director of any charity. Consider a situation in which Director A makes a donation of publicly-traded securities to a public foundation of which Director A is a director ("Charity B"). The CRA's logic seems to be that the donation would not be a gift because Director A has a vote in respect of Charity B. This is illogical and fails to consider the nature of private and public foundations and charitable organizations where Directors may, and often do, make gifts to charities on whose board they serve, and rightly receive official donation receipts.

The CRA appears to imply that a donation to a charity by a director of that charity is not a gift at law because the director donor could have a vote (among many) and may direct the gifted assets in some manner. This is a very disturbing perspective as it could render many private family foundations (and almost all foundations and charitable organizations in general) completely incapable of issuing donation receipts for gifts received from donors who are directors.

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On page 5 of your letter, you suggest that the shares of [REDACTED] were "not being held for their own benefit" and that "the Foundation did not retain the shares for any significant amount of time". These statements are concerning and should not form the basis for determining the validity of a gift, nor for determining whether there was any donative intent.

It is very common, in our experience, to have a charitable organization, public foundation, or private foundation receive a donation of publicly traded shares and immediately liquidate those shares for cash. Your comment that the shares were "not being held for their own benefit" seems to imply that a recipient of a donation must hold the assets donated for some period of time and an immediate liquidation or conversion would preclude the gift from being valid.

We challenge this view on the basis that it is not within the CRA's purview to dispute the business and investment decisions made by the directors and/or management of an organization. The duration of time from receipt of a donation of shares to a charity, to conversion of those shares into something else should not be a determining factor in evaluating whether or not a gift is valid at law.

The Foundation and Oak Tree made legitimate and independent business decisions to accept the [REDACTED] shares as a donation. Likewise, the Foundation and Oak Tree made business decisions to exchange the [REDACTED] shares donated by the Donors for assets that would produce income sufficient to satisfy the DQ in subsection 149.1(1) of the Act.

The retention, conversion, liquidation, and disposition of assets donated to an organization is determined by the business acumen of the directors and management of the organization and should not be dictated by the CRA, irrespective of whether a taxpayer made a bad business decision.¹²

Further, the Act allows for situations where a charity may later sell gifted property for FMV without vitiating the gift. Where the original donated property is transferred to the donor, subsection 118.1(26) does not apply to deny the gift if "that later transfer is reasonable consideration or remuneration for property acquired by or services rendered to a person".¹³

Following the donation of [REDACTED] shares which was valid at law, the Foundation, in its discretion, determined that the [REDACTED] shares would not provide a sufficient level of dividend income (as described above) in order to fulfill the DQ. The Foundation then undertook an asset exchange for assets that the Foundation, in its sole discretion, deemed appropriate and suitable for which it could satisfy its DQ.

We respectfully disagree with your position that there was no donative intent and ask that you reconsider your position.

Determination of FMV

Having not been provided with a detailed valuation and basis for determination of the supposedly required discount, we are left with no ability to understand the CRA's approach and consequently must conclude that the approach is unreasonable or is arbitrarily determined. We request a copy of the business equity valuator's analysis in order to provide further comments, as needed.

¹² Tonn et al. v. The Queen, 96 DTC 6001, at 6006 (FCA)

¹³ Section 118.1 of the Act

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It is critical in valuing the shares of [REDACTED] that, in accordance with CICBV standards, the valuator considered the economic environment at the time of the valuation, the industry in which [REDACTED] operated, the movement of the share price following the donations, and the business carried on by [REDACTED] itself, including the history of that business. The open market functions to accomplish exactly this. With regard to the specific nature of [REDACTED] it is a well-established corporation that has been a listed entity for many years. The share price, since October 2007 has risen from \$8.45 to \$35.50 as it traded at the close of business on January 8, 2020. It is not a speculative stock and is not a penny-stock.

A detailed analysis, as outlined in *Shulkov v. R.*¹⁴, is required in order to determine the appropriate discount or premium, as the case may be, to the trading price in an open market, being the TSX. The relevant questions in *Shulkov* were as follows:

- Was there a reason to expect share prices to decrease over the valuation period?
- Was there regular trading activity?
- Is a blockage discount required?

The position taken by the CRA does not appear reasonable. A donation of shares is not a disposition on the open market, but is instead an insulated transaction. It appears that the CRA's analysis assumes that this donation is akin to an open market sale which is not accurate. Furthermore, if a shareholder were to sell a large block of shares, it is very common planning to space out the sale of the large block of shares so as to not cause shock to the stock price. The CRA's analysis has made very broad and prejudiced assumptions including that the disposition would be executed in one block, rather than spaced out over a period of several days to an even longer period.

FMV is the highest price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the asset in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm's length and under no compulsion to buy or sell.¹⁵ The trading price for the [REDACTED] stock is the most readily available and accurate FMV for the [REDACTED] shares and is the best indicator for the FMV of the gift.

It is unreasonable to expect that a donor, who intends to donate shares of a public company, undertake a costly and time-consuming independent valuation for each donation of shares of that public company, when an easily ascertainable FMV is available at every moment during trading hours.

While Redekop was, at the time, a Director of [REDACTED], any internal financial information would have been based on historical cost, rather than FMV. Similarly, while certain assets held by [REDACTED] may have been subject to recent appraisals for insurance or other purposes, there was by no means any practical way to ascertain the full FMV of [REDACTED] without undertaking a full valuation which would have been a monumental undertaking, both in terms of effort and cost.

Furthermore, a minority shareholder (which Redekop was), who happens to donate a number of shares that exceeds the daily volume, may not actually be able to obtain the required information of the public company in order to complete the valuation. There is limited obligation under corporate law for a corporation to release its internal financial

¹⁴ 2012 CarswellNat 5090, 2012 TCC 457, [2013] 2 C.T.C. 2007, 2013 D.T.C. 1040 (Eng.)

¹⁵ Henderson Estate and Bank of New York v. M.N.R. [1973] C.T.C. 636 at 644 (FCTD); Carr, 2004 TCC 434;

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information to a shareholder. The shareholder may only be able to utilize recent quarterly or annual financial reporting which could easily be several months old and not representative of the current operations of the corporation.

In addition, we note that the CRA's published position on gifts of publicly traded securities is as follows:

*"As a general rule, for shares listed on a designated stock exchange (one that is publicly traded), the Canada Revenue Agency accepts the closing bid price of the share on the date it is received as the fair market value of the shares. It can also accept the midpoint between the high and the low trading prices for the day if that is a better indicator of fair market value on normal and active market trading. A charity may wish to get professional advice to determine the value of shares that are not publicly traded."*¹⁶

It bears repeating that the stock price on the TSX is the best indicator of the FMV of the shares of [REDACTED]. Consequently, we respectfully disagree with your assertion that the shares should be discounted for the reasons described above and ask that you reconsider this position.

Failure to Devote Resources to Charitable Activities

Based on the Foundation's governing documents and purpose statements (see Appendix 1 of this letter), the Foundation has acted entirely within the mission and purpose upon which the CRA had previously approved its charitable status.

Your letter suggests that the Foundation was operated for a non-charitable purpose of facilitating private tax planning and that the Foundation did not devote its resources to charitable activities.

To the contrary, the Foundation made extensive donations in the years in question:

Taxation Year	Recipient	Type	Amount
			\$
April 30, 2012	Oak Tree	Cash	2,040,000
	Oak Tree	[REDACTED] Shares	5,689,081
	Abbotsford Police Foundation	Cash	2,000
	Mennonite Church Canada	Cash	10,000
	[REDACTED]	Cash	51,500
April 30, 2013	Oak Tree	Cash	90,000
	[REDACTED]	Cash	50
	Mennonite Church British Columbia	Cash	25,000
April 30, 2014	Oak Tree	[REDACTED] Shares	1,861,100
	Mennonite Disaster Service	Cash	2,000
	M2W2 Association	Cash	100
	Mennonite Economic Development Association	Cash	1,000
	Food for Famine Society	Cash	550

¹⁶ CRA, Donation of Shares: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/donation-shares.html>

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All of the assets of the Foundation were used to support the charitable endeavours of the Foundation, including donations to qualified donees. As can be seen from Appendix 1, one of the purposes of the Foundation is to:

"The Foundation may also choose to support other, larger foundations whose stated goals are in alignment with those listed above."

In addition to providing support to the Mennonite Church (which is similarly outlined in the purpose document), the Foundation also supports local community organizations, and supports those organizations that assist individuals and families who lack food, shelter, or water, or have suffered from the consequences of disasters.

It is clear that the provisions of subsection 149.1(1) of the Act, specifically the definition of "charitable foundation", allow for a range of charitable purposes. For reference, we include the definition of "charitable foundation" below:

"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;

The above definition requires that a charitable foundation must be a corporation or trust. This condition is met as the Foundation is an incorporated entity.

Furthermore, it must be constituted and operated exclusively for charitable purposes. The term "charitable purposes" is defined in subsection 149.1(1) of the Act to include the disbursement of funds to a qualified donee. This condition is met in respect of the Foundation as the Foundation made disbursements to qualified donees (as listed above).

In order for an organization to be a charitable foundation, no part of the income may be available to any member. This condition is met as no directors or any other persons have received a benefit from the Foundation. The Foundation has, from its inception, functioned to support charitable endeavors, including making donations to charitable organizations and to other, larger foundations.

On page 6 of your letter, you state that the Foundation's directors did not acquire the shares of [REDACTED] for investment purposes, since the shares were only held for brief periods of time, nor did the Foundation redeem the shares. There are two significant concerns with respect to this statement:

"Held for investment purposes"

Implying that there is a specific and defined purpose that is provided in the legislation defined as an "investment purpose" is inappropriate when such a provision does not exist. The Foundation was gifted shares of a highly-liquid public company. It is problematic that the CRA considers that the acquisition of shares of a public company is not in and of itself indicative of an "investment purpose". What, then, would constitute an "investment purpose" of the acquisition of shares of a publicly-traded corporation?

Your comments further suggest that the Directors of the Foundation did not appropriately manage the assets of the Foundation by accepting a gift which was comprised of publicly-traded shares. We are of the view that this interpretation is incorrect and implies that the CRA intends to take a position to educate directors on

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how to properly run a charitable foundation. To be clear, this is not the mandate of the CRA.

"Redeem the shares"

As you know the redemption of shares in a private company situation where preferred shares are donated to a charitable organization or charitable foundation is vastly different than the situation at hand. Firstly, a common share of a public company cannot be simply "redeemed" by its holder. Furthermore, a common share cannot be "redeemed", in general. Instead, in the context of a publicly-traded corporation, the issuer must undertake an issuer bid whereby shares are repurchased by the issuer. A minority shareholder, whether an individual or a foundation, cannot demand that a public company repurchase its shares.

Your suggestion that the Foundation's inability to redeem the shares of [REDACTED] causes the Foundation to fail to devote its resources to charitable activities is plainly incorrect. Even if the shares could have been redeemed, there is no requirement that a foundation convert shares to cash within a prescribed period.

Further on page 6, you make the assertion that the Foundation has "limited activities outside of private tax planning" and would be considered by a reasonable person to have been orchestrated for the purposes of facilitating private tax planning. As indicated above, and throughout this letter, the ability of a charitable foundation to exist is predicated on the activities of the foundation supporting charitable purposes. The Foundation has done just that: supported various charitable organizations in different sectors and supported other, larger foundations (like Oak Tree), while ensuring that no private benefit has been conferred.

As of January 9, 2020, Oak Tree is a registered public foundation. See Appendix 2 for an excerpt from the CRA's website. We fail to understand which aspect of a donation of shares from the Foundation to Oak Tree is uncharitable as Oak Tree is currently, and was at the time of the gift of shares, a qualified donee pursuant to the provisions of the Act.

As described earlier in this letter under the heading *"Lack of Donative Intent"*, no private benefit had been conferred at any point: the official donation receipts were issued for the actual FMV based on the trading price in a public market; and, the asset exchange which involved the [REDACTED] shares and other assets occurred at the FMV of the assets such that the FMV of the [REDACTED] shares equaled the FMV of the other assets.

We respectfully disagree with your assertion that the Foundation failed to devote its resources to charitable activities based on the foregoing discussion.

Failure to Meet the DQ

We recognize that the CRA has determined that there may be a DQ shortfall in the years under examination. Based on discussions with our client, we have been advised that the CRA's calculation of the DQ has been requested but has not yet been received.

We reiterate our client's request to be provided with a copy of the CRA's DQ calculations for verification. In further discussions with our client, it was confirmed that the Foundation does in fact maintain an ongoing calculation of the DQ requirements and is cognizant of managing the DQ on an annual basis.

In the event that the CRA's calculation is correct, the Foundation is happy to fulfill its obligation under the DQ regime to satisfy any shortfall. Given the amount of the suggested



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DQ shortfall is relatively small (in the amount of \$85,188), we are of the view that this is an easily resolved matter.

We respectfully request that the CRA provide a copy of the DQ shortfall as it has been calculated. We further request that the CRA provide the Foundation with a reasonable opportunity to rectify any actual shortfall based on a mutually-agreed calculation of the DQ.

Conclusion and Next Steps

We would be pleased to discuss these matters further. Should the CRA be in agreement with the foregoing analysis and discussion, the Foundation and its advisors are eager to discuss the result of this review including, and being limited to, an education letter outlining the necessity of ensuring the DQ is satisfied, in the event the CRA's calculation is indeed correct.

Please contact the writer directly at your first opportunity.

Yours truly,



Encl.

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January 15, 2020*

**Appendix 1 John & Lorena Redekop Foundation
Mission and Purpose Statement**

John & Lorena Redekop Foundation

Purpose Statement, Members Draft

March 25, 2008

It is the stated goal of the John & Lorena Redekop Foundation (the "Foundation") to receive gifts from individuals to support other charitable organizations or public Foundations in Canada.

Charities that shall be supported shall have a purpose as follows:

- 1) Supporting the ministry of the Mennonite Church or similar evangelical Christian denominations
- 2) Support those that are without food, shelter or water
- 3) Support local community organizations that help underprivileged or provide a community benefit
- 4) Support education and rehabilitation

The Foundation may also choose to support other, larger Foundations whose stated goals in are alignment with those listed above.

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Appendix 2 **Oak Tree Foundation**
Confirmation of Registered Status

Detail page

Use this page to confirm a charity's status and Business/Registration number. The Charities Directorate has not necessarily verified the other information provided by the charity.

Oak Tree Foundation

Business/Registration number	825479666-RR-0001
Charity status	Registered
Effective date of status	2009-12-18
Sanction	N/A
Language of correspondence	ENGLISH
Designation	Public foundation
Charity type	Other purposes beneficial to the community
Category	Foundations
Address	201-3550 MT LEHMAN RD
City	ABBOTSFORD
Province, territory, outside of Canada	BC
Country	CA
Postal code/Zip code	V4X2M9

Mr. John Dumalski
John & Lorena Redekop Family Foundation
BN 85812 8754 RR0001
Your file #: 3036513
January 15, 2020

Appendix 3 Summary of Transactions
(provided by CRA)

Appendix 2

SHARES

Explanation of Transactions

Common shares are listed on the Toronto Stock Exchange ("TSX").

1. December 1, 2007 - J. Redekop donates 703,496 shares of [REDACTED] to Theanon in two separate donations. ODR's issued for \$6,331,464. (9.00/share)

2. May 9, 2009 - Theanon gifts 703,496 shares of WFC to J&L Redekop Fdn valued at \$4,994,821. (7.10/share)

3. September 24, 2009 - J&L Redekop Fdn. transfers 703,496 shares of [REDACTED] to John Redekop valued at \$4,994,821 in an exchange of assets. (7.10/share)

4. March 25, 2010 - Theanon gifts 678,896 shares of [REDACTED] to Oak Tree Fdn valued at \$5,003,463. (7.37/share)

(Note: Filed T3010/T1236 for Theanon for YE April 30, 2010 reports \$7,332,076 was gifted to Oak Tree which included a cash gift of \$2,328,613. Gift of \$7,332,076 not identified as a designated gift on Theanon's T1236. On the date the gift was made Blake Bromley was a director of both Theanon and Oak Tree.)

5. March 25, 2010 - Oak Tree Fdn transfers 678,896 shares of [REDACTED] valued at \$5,003,463 to John Redekop in exchange of assets (promissory notes). (i.e. amounts are due from 4 corporations) (7.37/share)

6. July 27, 2010 - John Redekop Holdings donates 324,000 shares of [REDACTED] to J&L Redekop Fdn. ODR issued for \$3,152,520. (9.73/share)

7. October 1, 2010 - J&L Redekop Fdn gifts 324,000 shares of [REDACTED] to Oak Tree valued at \$3,434,400. (10.60/share)

(Note: Filed T3010/T1236 for J&L Redekop Fdn for YE April 30, 2011 reports \$4,507,283 was gifted to Oak Tree which included a cash gift of \$1,072,883. Gift of \$4,507,283 was not identified as a designated gift on J&L Redekop's T1236. During the course of the audit, the auditor was provided with an amended T1236 which indicated that the gift of \$4,507,283 was identified as a designated gift. The auditor was unable to locate the amended T1236 in the return file or the P/D file of J&L Redekop.)

8. May 30, 2011 - J. Redekop Holdings donates 490,992 shares of [REDACTED] to J&L Redekop Fdn. ODR issued for \$8,150,467. (16.60/share)

9. May 31, 2011 - John Redekop Holdings transfers 996,000 [REDACTED] shares to Oak Tree Fdn valued at \$16,533,600. Promissory note issued to John Redekop Holdings. (16.60/share)
(Note: John Redekop Holdings subsequently assigns promissory note to John Redekop.)

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Appendix 3 Summary of Transactions, continued.
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10. October 31, 2011 - Oak Tree Fdn transfers 400,000 shares of [REDACTED] to John Redekop valued at \$5,800,538. Amount due to John Redekop reduced. (14.50/share)

11. December 28, 2011 - John Redekop donates 22,000 shares of [REDACTED] to J&L Redekop Fdn. ODR issued for \$259,600. (11.80/share)

12. December 29, 2011 - John Redekop donates 238,000 shares of [REDACTED] to Stewards Fdn. ODR issued for \$2,796,500. (11.75/share)

13. April 17, 2012 - J&L Redekop Fdn. gifts 512,992 shares of [REDACTED] to Oak Tree Fdn valued at \$5,689,081. (11.09/share)

(Note: Filed T3010/T1236 for J&L Redekop Fdn for YE April 30, 2012 reports \$7,729,081 was gifted to Oak Tree which included a cash gift of \$2,040,000. Gift of \$7,729,081 was identified as a designated gift on J&L Redekop's T1236.)

14. July 20, 2012 - John Redekop Holdings donates 185,000 shares of [REDACTED] to J&L Redekop Fdn. ODR issued for \$2,053,500. (11.10/share)

15. October 25, 2012 - Oak Tree Fdn transfers 523,992 shares of [REDACTED] to John Redekop valued at \$5,816,311. Amount due to John Redekop reduced. (11.10/share)

16. February 26, 2013 - Stewards Fdn gifts 238,000 shares of [REDACTED] to Oak Tree Fdn valued at \$2,687,020. (11.74/share)

17. September 26, 2013 - J&L Redekop Fdn gifts 185,000 shares of [REDACTED] to Oak Tree Fdn valued at \$1,861,100. (10.06/share)

(Note: Filed T3010/T1236 for J&L Redekop Fdn for YE April 30, 2014 reports \$1,861,100 was gifted to Oak Tree. Gift of \$1,861,100 was identified as a designated gift on J&L Redekop's T1236.)

18. October 31, 2013 - Oak Tree Fdn transfers 523,000 [REDACTED] shares to John Redekop valued at \$5,625,120. Amount due to John Redekop reduced. (10.76/share)

19. September 30, 2014 - Oak Tree Fdn transfers 485,000 [REDACTED] shares to John Redekop valued at \$4,995,500 in an exchange of assets. [REDACTED] (promissory note) (10.30/share)