



REIGSTERED MAIL

Victory Christian Centre International of Niagara Inc.

SEP 11 2017

Attention: Iain MacDonald

BN: 883386609RR0001

File #:3037776

**Subject: Notice of Intention to Revoke**  
Victory Christian Centre International of Niagara Inc.

Dear Mr. MacDonald:

We are writing further to our letter dated April 14, 2015 (copy enclosed), in which the Victory Christian Centre International of Niagara Inc. (the Organization) was invited to submit representations as to why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered the Organization's May 25, 2015, response and must advise that our concerns with respect to the Organization's non-compliance with the requirements of the Act for continued registration as a charity have not been alleviated. Our position is fully described in Appendix "A," attached.

### **Conclusion**

The Canada Revenue Agency (CRA)'s audit revealed that the Organization is not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization failed to devote its resources to charitable activities by providing undue benefits; failed to maintain adequate books and records; failed to issue Forms T4, T4A, and T4NR correctly and as required; failed to issue donation receipts as required; and failed to file its information returns as required. In addition, it was found that two of the directors who controlled the charity, either directly or indirectly, were ineligible individuals, as defined in Section 149.1(1) of the Act. For these reasons, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For the reasons outlined in our letter dated April 14, 2015, pursuant to subsection 168(1) and 149.1(4.1) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

*Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), 168(1)(e), and paragraph 149.1(4.1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.*

<b>Business number</b>	<b>Name</b>
883386609RR0001	Victory Christian Centre International of Niagara Inc. Fort Erie ON

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

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

However, a copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of **30 days** from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, even though it may have filed a Notice of Objection.

### **Consequences of revocation**

As of the effective date of revocation:

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

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

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on prescribed Form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities);
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, 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,

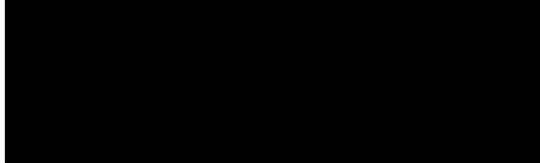


Tony Manconi  
Director General  
Charities Directorate

Attachments:

- CRA letter April 14, 2015
- Appendix "A", CRA's position
- Appendix "B", Relevant provisions of the Act

C.C.:





CANADA REVENUE  
AGENCY

AGENCE DU REVENU  
DU CANADA

Victory Christian Centre International of Niagara Inc.  
[REDACTED]

Attention: Iain MacDonald

BN: 883386609RR0001  
File #:3037776  
Registered Mail

April 14th, 2015

**Subject: Audit of Victory Christian Centre International of Niagara Inc.**

Dear Mr. MacDonald:

This letter is further to the audit of the books and records of Victory Christian Centre International of Niagara Inc. (the Organization), conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from 2011-01-01 to 2012-12-31.

We apologize for the delay in completing our review.

The CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities: Providing an undue benefit	149.1(1), 149.1(2), 168(1)(b)
2.	Failure to maintain adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e)
3.	Failure to file/incorrectly filing T4 and T4As	153(1), Regulation 200(1) and (2), 168(1)(b)
4.	Issuing receipts not in accordance with the Act and/or its Regulations	Regulations 3501, 168(1)(d)
5.	Failure to file an information return as required by the Act	149.1(14), 168.1(c)

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

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

#### **Identified areas of non-compliance**

##### **1. Failure to Devote Resources to Charitable Activities: Providing Personal Benefits to Directors (and related persons)**

Under subsection 149.1(1) of the Act, a "charitable organization" is defined as "an organization...all the resources of which are devoted to charitable activities carried on by the organization itself...".

Paragraph 149.1(1)(b) of the Act stipulates that no part of a charity's income is payable, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. The CRA considers the meaning of the term "trustee", for registered charity purposes, to include those persons who stand in a fiduciary relationship to the charity, having general control and management of the administration of a charity, including directors of corporations established for charitable purposes. This is essentially a rule against self-dealing, reflecting the general rule of equity that a trustee must not profit out of his position of trust, nor must he place himself in a position where his duties as a trustee conflict with his own interests. It is also a statutory embodiment of the common law test that individuals with ties to a charity should not profit from their association with the charity.

In circumstances where an organization does provide such benefits, it may be considered an undue benefit. The meaning of "undue benefit" with respect to charities is clarified in Subsection 188.1(5) of the Act:

"an undue benefit conferred on a person (referred to in this Part as the "beneficiary") by a registered charity or registered Canadian amateur athletic association includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity or association that is paid, payable, assigned or otherwise made available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity or association, who has contributed or otherwise paid into the charity or association more than 50% of the capital of the charity or association, or who deals not at arm's length with such a person or with the charity or association, as well as any benefit conferred on a

beneficiary by another person, at the direction or with the consent of the charity or association, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity or association would have a right, but does not include a disbursement or benefit to the extent that it is

- (a) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity or association;
- (b) a gift made, or a benefit conferred,
  - (i) in the case of a registered charity, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity, and
  - (ii) in the case of a registered Canadian amateur athletic association, in the ordinary course of promoting amateur athletics in Canada on a nationwide basis; or
- (c) a gift to a qualified donee."

### **Audit Findings**

During the course of the audit, it was revealed that a portion of the Organization's funds had been used to pay the personal expenses of two of its directors, as well as members of those directors' families. These included expenses for motor vehicles, clothing, meals and trips, as well as amounts related to their personal residence, including utility and mortgage payments. We acknowledge that some of the expenditures were noted by the Organization as personal in nature and included in the payroll general ledger account. However, no T4 or T4A slips were issued by the Organization for these amounts. In the event that T4 or T4A slips had been prepared, paying the personal expenses of an organization's directors and their family members constitutes a non-charitable use of the organization's resources.

A further review of the Organization's books and records revealed various entries that were identified as being part of the Pastor's "Clothing Allowance" or "Personal Allowance". There were numerous receipts and invoices related to clothing and accessories within the Organization's expense folders. Expenses of this nature are considered personal.

Along with its books and records, the Organization provided various [REDACTED] statements that also appear to show expenses for personal items, such as monthly amounts for [REDACTED], clothing, jewelry, motorcycle items and travel.

In the documentation provided with respect to a trip to Florida, discussed below, we also uncovered a [REDACTED] receipt within the supplied documentation which was identified as "Mom's Fridge Receipt". This appears to be a receipt for a fridge purchased by an individual named [REDACTED] a person not dealing at arm's length with the directors.

As mentioned above, paying for the personal expenditures of the directors and their families constitutes a non-charitable use of the Organization's resources, represents an undue benefit, and may also constitute taxable benefits.

A portion of the Organization's funds appear to have been used to cover the expenses associated with the operation of a number of vehicles, including a [REDACTED] an [REDACTED] and a [REDACTED] as well as a motorcycle. These expenses included gas, maintenance and lease payments. In the questionnaire completed by the Organization, it was stated that the primary drivers of the [REDACTED] and [REDACTED] were Iain and Tina MacDonald, respectively. However, no documentation (such as mileage log books) was maintained to indicate who used which vehicle or how the vehicles might have been used for charitable purposes. We note that in the insurance documentation provided, the only drivers listed on the vehicles are members of the MacDonald family, while the motorcycle insurance is solely in the name of Iain MacDonald.

Regarding the motorcycle, Mr. MacDonald indicated that it was given to him by members of the congregation, although it was not possible to insure the motorcycle through the church. As identified in the payroll audit (see below), the motorcycle was transferred to Mr. MacDonald for \$1. We would point out that this amount was substantially less than the fair market value. As per the payroll audit, the value at the time of transfer was \$4,500, resulting in a taxable benefit of \$4,499.

Regarding the [REDACTED] rental and insurance payments for the vehicle were made to [REDACTED] (also mentioned above). This would indicate that the Organization was paying for the insurance on [REDACTED] behalf. In addition, it was noted that receipts for some of the motor vehicle expenses were in the name of [REDACTED]

With respect to how the vehicles were used, the Organization presented that any motor vehicle travel would be related to the activities of the church, with attendance at social events cited as one example. We would advise that attendance at social events is considered personal, as is travel to and between the director's residence and the church. To claim otherwise, the Organization must be able to demonstrate, with documentary evidence, what the vehicles were used for and how that use relates to the

charitable activities of the Organization. Additionally, the Organization must be able to identify personal use of the vehicles.

It was also noted that there were claimed expenses (e.g. marine parts, marina fees) relating to a boat. When asked about the boat, Iain MacDonald indicated that it was his family's personal boat and they stored it at their residence. The boat and its associated expenses are therefore considered personal.

With respect to meals, the Organization provided two examples of instances where they did not consider the expenses to be personal. The first example was that of the directors going out for coffee and having discussions concerning the Organization. The second example was that of the family members going out for a meal after a religious service and discussing the service. The Organization's position on this issue is incorrect because although the activities of the Organization may have been discussed, this does not alter the fact that the primary purpose of the meals was personal.

A number of trips were identified in the Organization's records, including trips to Florida in 2011 and 2012, Cyprus in 2012 and Algonquin Park in 2011.

With respect to the Florida trip in 2011, Iain MacDonald stated that this was a personal family trip. For 2012, the documentation for the Florida trip does not support that this was related to the charitable activities of the Organization. While we note that there was a single-page document entitled "Discussed Agenda" with a series of items highlighted, this does not demonstrate that the primary purpose of the trip was to carry out the charitable activities of the Organization. As well, the only individuals in attendance were members of the MacDonald family.

Regarding the 2012 trip to Cyprus, Iain MacDonald indicated that there was no itinerary for the trip and that they (Tina and Iain MacDonald) went there blind. No documentation was provided that would serve to demonstrate how the trip related to the charitable activities of the Organization. We note that the accommodations were at resort/spa facilities and amounts for clearly personal items, such as a jacuzzi and spa treatments, as well as an amount for men's jewelry, were recorded on the invoices. It was presented by Iain MacDonald that this was a month long trip. Given the length of the trip, it is not unreasonable to expect that there would be supporting documentation, such as meeting minutes or planning documents showing the purpose and nature of the trip, itineraries, etc. However, a review of the minutes that were provided (note that there were 2 types of minutes provided – one set with just the year and the other identified as being G12 - none are identified as being director's meetings or an AGM) contained no details regarding this or any other trip.

A sample of the amounts recorded for the Algonquin Park trip show that the expenses (such as clothing and camping/fishing gear) were personal in nature, and that they related to just one or two people.

We note that the Organization gave no indication that it had carried out any foreign activities on either its 2011 or 2012 charity information returns. We would note as well that when the Organization applied for re-registration in 2012, it gave no indication at any point regarding plans to undertake activities outside of Canada. As such, it is our position that these trips and the expenses associated with them are personal in nature and constitute a non-charitable use of the Organization's funds, as well as representing an undue benefit to the directors and/or their families.

A payroll audit of the Organization was conducted for the 2011 and 2012 calendar years. From the information obtained during this payroll audit, the CRA determined that the Organization had provided remuneration and taxable benefits to members of the MacDonald family. Taxable benefits/remuneration identified from that audit included: cash withdrawals, amounts identified as "owed to pastor", utilities, trips, clothing allowance, personal credit card, credit card, motorcycle and motorcycle insurance. A summary of those benefits from that audit is presented in the tables below.

#### Auto Benefits:

2012		Total Cost of Vehicle	No. of Mths	Standby Charge / %	Reduced Standby Charge	Operating Expense	Net Taxable Benefit
Last name	Given Name	Vehicle Description - Year / Make / Model	Vehicle				
MacDonald	Tina			\$34,480.84	12 2.00%	\$8,275.40	\$5,201.04 \$13,476.44
MacDonald	Iain			\$23,481.00	12 2.00%	\$5,635.44	\$5,201.04 \$10,836.48
				\$500.00	5 66.70%	\$1,666.67	\$2,167.10 \$3,833.77

#### 2011

		Total Cost of Vehicle	No. of Mths	Standby Charge / %	Reduced Standby Charge	Operating Expense	Net Taxable Benefit
Last name	Given Name	Vehicle Description - Year / Make / Model	Vehicle				
MacDonald	Tina			\$34,480.84	12 2.00%	\$8,275.40	\$4,800.96 \$13,076.36
MacDonald	Iain			\$23,481.00	12 2.00%	\$5,635.44	\$4,800.96 \$10,436.40

#### Motorcycle Benefits:

#### 2012

Last name	Given Name	Vehicle Description - Year / Make / Model	Price Paid (before taxes)	FMV	Equity Appraised (T104R)	Net Taxable Benefit
MacDonald	Iain			\$1.00	\$4,500.00	\$4,499.00

**Other Taxable Benefits:**

2012

Last name	Name	Description	Net Taxable	Benefit	Notes
MacDonald	Tina	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$72,344.62	Cash	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$72,344.62	Cash	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$34,736.63	Owed to Pastor Debit	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$28,004.64	Credit Cards	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$9,906.96	Utilities 452	
MacDonald	Tina	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$9,906.95	Utilities 452	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$3,983.40	Trips	
MacDonald	Tina	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$3,983.40	Trips	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$1,977.11	Clothing Allowance	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$1,573.84	Motorcycle insurance	
<b>Totals</b>			\$238,762.17		
MacDonald	Iain		\$152,527.20		
MacDonald	Tina		\$86,234.97		

2011

Last name	Name	Description	Net Taxable	Benefit	Notes
MacDonald	Tina	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$43,359.07	Cash	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$43,359.04	Cash	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$30,834.06	Owed to Pastor Debit	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$8,529.02	utilities 452	
MacDonald	Tina	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$8,529.01	utilities 452	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$1,777.83	Trips	
MacDonald	Tina	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$1,777.82	Trips	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$1,455.73	Clothing Allowance	
MacDonald	Iain	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$79.38	Personal [REDACTED]	
MacDonald	Tina	Personal and living expenses/purchase of assets - paid for by the entity - in cash	\$79.38	Personal [REDACTED]	
<b>Totals</b>			\$139,780.34		
MacDonald	Iain		\$86,035.06		
MacDonald	Tina		\$53,745.28		

Additional information regarding the Organization's payroll is presented in section 3, below.

As a result of the private benefits identified during both the charity and payroll audits, it appears that the Organization has permitted the use of its charitable assets for the private gain of a member and/or director. As such, the Organization is regarded as having failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization - that "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".

In cases where a registered charity is involved in serious non-compliance, or for repeat or multiple infractions, the CRA may impose intermediate sanctions (that is, financial penalties or suspensions) as outlined in section 188.1 of the Act. The penalty applicable to a registered charity that provides an undue benefit to any person or entity, on first offense, is 105% on the amount of the undue benefit. At this point, we have elected not to apply the financial penalty. Please see item (b) in the Organization's options below for additional information on the application of sanctions/penalties

Under the Act, a registered charity cannot confer on a person an undue benefit. A registered charity that contravenes the Act can have its registration revoked. For this reason, there may be grounds for revocation of the charitable status of the the Organization under paragraph 168(1) (b) of the Act.

## **2. Failure to maintain adequate books and records**

We have serious concerns regarding the accuracy and reliability of the Organization's books and records.

While there were only 3 missing entries in the 2012 general ledger, a review of the transaction numbers in the 2011 general ledger reveals significant gaps in the numbering. There are 87 entries missing between numbers 5763 to 5849, and 538 missing between numbers 5584 and 6391. Using the date of entry as recorded in the [REDACTED] Audit, we were able to determine that entries for these missing numbers related to the 2009 and 2010 years. In other words, entries for the 2011 year were started, and then entries for these prior years were entered.

With respect to the dates that the items were entered into your general ledgers, in 2011, approximately 98.7% of the entries were made between 2012-05-16 and 2012-06-26, with only 1.3% being made in the 2011 calendar year. For 2012, none of the entries were made in the 2012 calendar year, with all entries being made between 2013-06-13 and 2013-07-01.

Although the entries were made into the general ledgers 5 to 7 months after the year-end, corrections to the entries were still required after the initial entries were made. This

is most notable in the 2012 *Donations* and *Owed to Pastor* accounts, with some entries requiring multiple corrections to achieve the final result.

Using the Audit Trail of [REDACTED] we determined that the following transaction numbers were changed after they were originally posted, and that some required multiple corrections: 7566, 7575, 7587, 7762, 7763, 7770, 7789, 7999, 8018, 8029, 8038, 8050, 8238, 8255, 8263, 8275, 8380, 8381, 8382, 8383, 8424, 8479, 8480, 8481, 8595, 8596, 8597, 8598, 8689, 8690, 8691, 8692, 8771, 8772, 8773, 8774, 8775, 8882, 8883, 8885, 8946, 8948, 8949, 8950, 9193, 9194, 9195, 9196 and 9246.

In all but transaction number 9246, the original entries in these transactions were a debit to the bank and a credit to the account for regular donations. The changes to the entries then reduced the amount for regular donations and then credited to the amounts *Owed to Pastor*. As an example:

Transaction number 8272

The original entry to record the donations was:

Entry Date	Trans #	Entry By	Account	Name	Memo	Debit	Credit
2013-06-25	8772	Admin	1000 [REDACTED] Current Acct.		Deposit	7,309.76	0
2013-06-25	8772	Admin	4030 · Contributions Income:4060 · Regular Donations	Donor/Member List...		0	7,309.76

This entry was changed to reduce the amount recorded for donations and crediting the *Owed to Pastor* Account:

Entry Date	Trans #	Entry By	Account	Name	Memo	Debit	Credit
2013-06-28	8772	Admin	1000 [REDACTED] Current Acct.		Deposit	7,309.76	0
2013-06-28	8772	Admin	4030 · Contributions Income:4060 · Regular Donations	Donor/Member List...		0	7,209.76
2013-06-28	8772	Admin	2570 · Short-term Liabilities:2575 · Owed To Pastor	Iain MacDonald	Pastors Giving	0	100

This entry was then changed again to further increase the credit amount in the *Owed to Pastor* Account:

Entry Date	Trans #	Entry By	Account	Name	Memo	Debit	Credit
2013-06-28	8772	Admin	1000- [REDACTED] Current Acct.		Deposit	7,309.76	0
2013-06-28	8772	Admin	4030- Contributions Income:4060- Regular Donations	Donor/Member List...		0	6,983.76
2013-06-28	8772	Admin	2570- Short-term liabilities:2575- Owed To Pastor	Iain MacDonald	Pastors Giving	0	100
2013-06-28	8772	Admin	2570- Short-term liabilities:2575- Owed To Pastor	Iain MacDonald	Pastors Giving	0	226

In transaction number 9246, the original entry was a debit to the *Cash on Hand* account, along with multiple credits to the *Miscellaneous Income* account. Then the Organization changed the name of the *Miscellaneous Income* account to *Internet Donations*, with most of the credit lines changed to *Internet Donations* [REDACTED] (total \$ 30,216.12). However, 8 lines were changed to credit account 2575 - *Owed to Pastor* (memo *Pastors Giving*), for a total of \$9,563.72. See [REDACTED] donations below for additional information.

The total of these adjustments where the regular donations were reduced and reclassified as the *Pastors Giving* (through the credits to account 2570) was \$24,568.72.

The impact of these changes is that the amount owed by the Pastor to the Organization was reduced. Through journal entries, the amount in the *Owed to Pastor* account is zeroed out (along with cash on hand) by an offset to the salary account. The credits in the *Owed to Pastor* account, then, have the impact of reducing the amount that gets recorded as the salary expense. As a result of these adjustments, the salary expense is overstated and the amount reported as donations is understated.

This information was reviewed during our meeting of February 10, 2014, at which time it was revealed that the credits to the *Owed to Pastor* account were put in place to reduce the amount that was reported as the salary expense on the charity information return. This was done because the Organization did not want the congregation to be aware of the full amount of the salary that they [the MacDonalds] were receiving, by factoring in their donations. As such, the Organization has purposely misrepresented the amount of its salary expense reported on the charity information return.

We would note that the entry dates into the general ledger, including the adjustment to the donation accounts, occurred after the fiscal year end and after the dates that the donation receipts were dated. In addition, the adjustments to reflect the payroll took place in June, 2012, and July, 2013, for the 2011 and 2012 years, respectively. This was after the due date for the filing of the T4s, which would appear to indicate that the Organization was not complying with its payroll obligations.

[REDACTED] Donations

We have reviewed the [REDACTED] sheets that were provided in response to our February 26, 2014, query sheet and we note the following:

- we were unable to determine if the payments represent actual donations or payments for goods or services, as not all of the amounts were identified as donations on the [REDACTED] sheets.
- there was a variance between the amounts collected and reported; as a result we believe that donations were incorrectly reported in the returns.
- 2011 donations received from [REDACTED] and [REDACTED] as listed on the [REDACTED] sheets, were not included in the 2011 [REDACTED] Donations folder provided during the audit.
- there were multiple adjustments to transaction number 9246, which included the credits identified as Pastor Giving. These adjustments were traced to the [REDACTED] sheets, and with the exception of one, the donations were identified on these sheets as being from [REDACTED]. The one exception was identified on the sheets as being from Iain MacDonald.
- it was presented that [REDACTED] was the business of Tina and Iain MacDonald; however, we are unable to verify this.

General Ledgers

We were unable to reconcile the donation information in the general ledgers to the 2011 and 2012 charity information returns:

2012

Total of all donations per g/l	
Regular donations (account 4060)	\$ 436,832.03
[REDACTED] (account 4100)	\$ 30,238.17
<u>Total of all donations</u>	<u>\$ 467,070.20</u>
Per Return	
Line 4500	\$ 377,401.00
Line 4530*	\$ 93,445.00
	<u>\$ 470,846.00</u>
Variance	-\$ 3,775.80

\*The same amount from line 4575 was not included in the analysis.

2011

Total of all donations per g/l	
Regular donations (account 4060)	\$339,365.05
██████████ account 4100)	\$0.00
<u>Total of all donations</u>	<u>\$339,365.05</u>
Per Return	\$65,309.00
Line 4500	\$272,727.00
Line 4530	\$338,036.00
Variance	<u>\$338,036.00</u> \$1,329.05

In response to our February 26, 2014, query, the Organization provided a binder of information and records on a USB flash drive (received by the Agency on April 3, 2014). Included on the USB flash drive were █████ files (Victory Mail data file 2012.docx and Victory Mail Data file 2011.docx). According to the Organization, these were "the █████ files used to generate the annual donation receipt". It was not possible to reconcile these files to the returns:

Using the file "Victory Mail Data File 2012.doc":

Total per 2012 Victory Mail Data	\$ 425,829.50
Donations Per Return	
Line 4500	\$ 377,401.00
Line 4530	\$ 93,445.00
Total per return	\$ 470,846.00
Variance	<u>\$ 470,846.00</u> -\$ 45,016.50

Using the file "Victory Mail Data File 2011.doc":

Total per 2011 Victory Mail Data	\$ 323,178.00
Per Return:	
Line 4500	\$ 272,727.00
Variance	\$ 50,451.00

#### Board Minutes

The Organization did not maintain any board of directors' or members' meetings' minutes. Further, although five people were listed on the application for re-registration submitted by the Organization, and five people were listed on the Directors/Trustees and Like Officials worksheet, two of those listed individuals (██████████ and █████), do not appear to be involved with any meetings of the Organization and have no involvement with running or supervision of the Organization.

The Organization did provide some meeting minutes, but these were not director's meeting minutes and were not minutes from the annual general meeting. The minutes that were provided were reviewed, and as noted above, there were no discussions regarding the trips taken by members of the MacDonald family.

An Organization that fails to maintain adequate books and records could have its charitable status revoked under subsection 168(1)(e) and under subsection 188.2(2), an Organization could be suspended from issuing donation receipts for a year if the books and records are inadequate. At this point, we are choosing not to apply the one year suspension. Please see item (b) in the Organization's options below for additional information on the application on sanctions/penalties.

Based on the above findings, it is CRA's position that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act. A charity that fails to maintain adequate books and records may be liable to a penalty under the Act, or have its registered status revoked.

### **3. Failure to prepare proper documentation for payments to an employee/director**

As noted above, the Organization failed to properly report the income and taxable benefits on the information slips issued to the employees and directors of the Organization. No T4s or T4A's were issued to any of the persons who received remuneration.

The Organization underwent a previous payroll audit which resulted in the Agency preparing information slips for the employees. Prior to that, although the Organization was providing remuneration, it had failed to prepare information slips. We note that the Organization has only filed information slips on its own for one year (2009), which was the year in which the previous payroll audit was started.

As a result of the previous payroll audit, the Agency prepared slips for 2006-2008 and although it continued to provide remuneration, the Organization failed to prepare any slips for the period after 2009. During the current payroll audit, slips were prepared for 2011 and 2012. Information slips for 2010 and 2013 are still required.

The adjustments of the current payroll audit are:

<b><u>Item</u></b>	<b><u>Description</u></b>	<b><u>Adjustments</u></b>	
		<b>2012</b>	<b>2011</b>
1.	Salary and Wages – T4	\$12,060.77	\$6,101.36
2.	Employee Taxable Benefits – T4	\$271,407.85	\$163,293.09
3.	Honoraria	\$9,350.00	\$10,450.00
	Total Adjustments:	<b><u>\$292,281.62</u></b>	<b><u>\$178,844.45</u></b>

An Organization that fails to issue T4 and T4A slips as required to, as well as not maintaining adequate documentation to support its remuneration and benefits paid, is not meeting the obligations of an organization registered under the Income Tax Act and as such, could be subject to a revocation of its charitable status and/or have its receipting privileges suspended for a year.

#### Payments to Non-Residents

We identified a number of instances where the Organization paid fees to guest speakers who visited the Organization. Per RC4445 - "Payments to Non-Residents for Services Provided in Canada" - the Organization is required to withhold 15% from fees, commissions, or other amounts that it pays to non-resident individuals, partnerships, or corporations for services provided in Canada. A T4A-NR slip is used to report these payments. The Organization failed to make the required withholdings and prepare the required slips.

Non-resident Payment Summary

	2012	2011
[REDACTED]	\$ 1,500.00	\$3,700.00
[REDACTED]	\$ 600.00	
[REDACTED]	\$ 1,500.00	\$1,500.00
[REDACTED]	\$ 1,500.00	
[REDACTED]	\$ 1,000.00	\$1,000.00
[REDACTED]	\$ 750.00	\$ 750.00
Totals	\$ 8,862.00	\$6,950.00

An organization that fails to issue T4 and T4A slips as required to, as well as failing to maintain adequate documentation in support of its remuneration and benefits paid, is not meeting the obligations of an organization registered under the Income Tax Act. As such, the organization could be subject to revocation of its charitable status and/or have its receipting privileges suspended for a year. In addition, the organization could be subject to penalties and be assessed interest for not properly filing the required information slips and/or submitting the proper withholdings.

#### **4. Issuing receipts not in accordance with the Act and/or its Regulations**

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Income Tax Act and are described in some detail in Interpretation Bulletin IT-110R3 Gifts and Official Donation Receipts. In addition, subsection 230(2)(b) requires that an Organization maintain a duplicate of each receipt containing prescribed

information for a donation received by it at an address in Canada recorded with the Minister or designated by the Minister.

The Organization's receipts do not meet the requirement of Regulations 3501. Specifically, they do not contain the following:

- The name, Canada Revenue Agency, and the website address [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities). (The receipts do contain the CRA website address, but they do not contain the name "Canada Revenue Agency").
- If cash gift and advantage provided to the donor, the total amount received, value of the advantage (cash or FMV) and eligible amount of the gift for tax purposes.
- The amount of the gift.
- The name of the donor, including initial.
- The full address of the donor.
- The place or locality where the receipt was issued.

None of the official donation receipts included the middle initial of the donors, and receipt # [REDACTED] does not contain the complete donor's name.

The documentation provided to the donors consists of two parts: the top part, which is in the form of a letter, and the bottom part (separated by a line or a perforation), which is marked as the "Official Donation Receipt for Income Tax Purposes". A review of the documentation issued for 2011 revealed that none of the official donation receipts (the bottom portion of the documentation) have the donor's name or address on them. Additionally, in the letter portion (the top part), none of the receipts contain the donor's address and two do not contain the donor's full name.

In 2012, receipt numbers [REDACTED] and [REDACTED] are either missing the complete address or provide no address at all.

As mentioned above, the Organization is required to retain at least one exact copy of the official income tax receipt (paper or electronic). However, it appears that the Organization has failed to maintain duplicate copies of its official donation receipts, based on its response to our February 26, 2014 query, in which the Organization stated that the receipt numbers in the records provided would not match the receipt numbers of the donors. Information obtained during the course of performing third-party verifications of donations also confirmed this.

We also note that the copy of the Victory Receipt Letter 2012 provided to our ECAS auditor, Hans Weltner, does not match the letters/receipts that were located during the course of performing third-party verifications of the donations or the copies or the copies of the receipts provided in response to our February 26, 2014 query.

In the case of a spoiled official receipt form, the Act requires that such receipts be marked as "cancelled" and such form, together with the duplicate thereof, is to be retained by the registered organization or the other recipient of a gift as part of its records. In the questionnaire completed by the Organization, it was indicated that the procedures being followed for cancelling a receipt included shredding the incorrect one. This is not the correct procedure, as indicated above.

An organization that issues donation receipts that are incomplete or incorrect could be liable for a penalty of 5% of the eligible amount stated on the receipts under subsection 188.1(7). This penalty increases to 10% for a repeat infraction within 5 years under subsection 188.1(8). At this point, we are not proposing to apply this penalty. Please see item (b) in the Organization's options below for additional information on the application on sanctions/penalties.

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

##### **5. Failure to file T3010 information return as and when required by the Act**

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal year end, file a Registered Charity Information Return (T3010) with the applicable schedules.

Additionally, it is the responsibility of every registered charity to ensure that the information provided in its return, schedules and statements, is factual and complete in every respect. A registered charity is not meeting its requirements to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

After reviewing the Organization's 2012 Giving Records, we were unable to reconcile the amounts to the T3010 returns:

The VCCI 2012 Giving Records indicated donations of \$470,846.97. On the 2012/12/31 return, the total revenue reported at line 4700 was \$470,846, but this amount does not match the total of the three lines with amounts on them on the return: line 4500 (\$377,401.87) and lines 4530 and 4575 (each with \$93,445.10) – the total of these three lines is \$ 564,292.07 (it does appear that the amount \$94,445.10 has been reported twice; however, although the Organization was asked to provide details on any errors on the returns and reconciliations, it has not done so).

The result is that we are unable to reconcile the charity information returns to the donation receipts and/or the Organization's books and records

The updated information provided by the Organization does not reconcile to the T3010. As a result we are unable to rely on this new information to satisfy our concerns. The reliability of the Organization's books and records with respect to its donations is also brought into question as the information in them does not match information received by the Agency information obtained during the course of performing third-party verifications of donations outside of the Organization's records.

As noted, by way of journal entries that were made 5-7 months after the fiscal year end, the *Owed to Pastor* account and *Cash On Hand* account were closed out with an offsetting amount to the payroll expense. The adjustments to the *Owed to Pastor* account and *Cash on Hand* account had the impact of reducing the amount that was reported for the payroll expenses. In addition, the changes discussed above with respect to *Pastors Giving* where the amount of the Regular Donations was reduced would appear to have reduced the amount of donations that were reported. The adjustments to reduce the amount reported for the payroll expense appear to have been deliberate.

As discussed during our various meetings, there were errors reported on the charity information returns and the financial statements filed with them. For example, amounts were recorded for prepaid insurance and rent which, based on our February 10, 2014 conversation, were incorrect. Additionally, on the 2012/13/31 return, \$93,445 was recorded both at line 4530 and line 4575.

During our February 10, 2014, meeting, the Organization stated that it would be providing reconciliations. In our query of February 26, 2014, we requested the following:

- reconciliations from your accounting records to your financial statements to your charity information returns;
- a reconciliation of your bank accounts to your financial statements and charity information returns for 2012, and
- details on any errors that the Organization had identified on the returns.

The Organization indicated in its response, dated March 28, 2014, that this information was going to be provided but, to date, we have not received it.

Regarding the yearly filing of its T3010 information returns, our records indicate that since registration, the Organization has only filed its T3010 return on time, as required, on one occasion, as indicated below:

FYE	Date Received	No. of days late
20131231	20140922	84
20121231	20130705	5
20111231	20120629	on time
20101231	20120327	270
20101231	20120326	Revoked
20091231	20110308	251
20081231	20090706	6

Pursuant to 168.1(1)(b), an Organization may have its charitable status revoked for not following the requirements of registration and under 188.1(6), an Organization that fails to file a charity information return as and when required to could be subject to a \$500 fine.

The Minister may revoke the registration of the registered charity in the manner described at paragraph 168(1)(c), because the registered charity has failed to file an information return as required under the Act. At this point, CRA has elected not to apply the financial penalty. Please see item (b) in the Organization's options below for additional information on the application on sanctions/penalties.

As a result, we have concluded that the Organization failed to exercise due care with respect to ensuring the accuracy of its T3010 Information Returns.

### **Designation**

When the Organization was originally registered, it was designated as a private foundation due to the fact that two of its three directors were not dealing with each other in an arm's length relationship.

During the process of obtaining re-registration in 2012, the Organization indicated that it had increased the number of its directors to five in order to be designated as a charitable organization. This change was necessitated by the fact that the Organization had been engaging in business activities – something which a foundation is not permitted to do. Although the Organization indicated that it had increased the number of its directors to five, and this fact was reported on its charity information returns, the Organization failed to amend its by-laws to reflect this. Additionally, and as noted above, no minutes were provided to indicate that an election of directors had ever taken place.

Although the Organization was designated as a charitable organization, it appears to meet the definition of a private foundation.

## **Internal Controls**

The internal controls of the Organization were considered inadequate as there was inadequate:

- segregation of duties;
- authorization of transactions,
- control over the assets and resources of the Organization; and
- documentation.

Members of the MacDonald family were directly involved in the receiving, recording and receipting of donations; they prepared and maintained the accounting records and the adjustments to them; they controlled/had access to the bank, banking records and credit cards and they were the decision makers for the Organization.

It was presented that [REDACTED] and another person were involved with the opening of the donation envelopes, and that it was [REDACTED] who was responsible for recording of the donations in Organization's records and making the bank deposits. She is also the person responsible for making the entries into the general ledgers.

The only authorized person on the Organization's credit card is Iain MacDonald and Tina MacDonald is the primary user of the bank card. They are also the ones who have been identified as having the only signing authority on the bank accounts.

As noted above, the Organization did not maintain any directors' or member's meetings' minutes and there is no indication that the entire board of directors exercised any control, or played any role in, the operations of the Organization. There is no indication that the board approved or reviewed any of the expenditures. These functions, and all decisions, were done by Iain and Tina MacDonald.

The full board of directors has failed to meet its obligations as it failed to ensure that proper meetings took place, proper minutes were maintained; was primarily passive in its role and it has allowed the resources of the Organization to be used for non-charitable purpose through the provision of undue benefits to the MacDonald family

## **Ineligible Individual**

The Act provides CRA with the discretionary authority to suspend or revoke the registration of a registered charity where an ineligible individual is a director, trustee, officer or like official, or if such an individual controls or manages the charity directly or indirectly. As detailed below, it appears that one or more directors of the Organization is an ineligible individual.

## Legislation

The definition of "ineligible individual" at subsection 149.1(1) of the Act reads, in part,

"Ineligible individual," at any time, means a person who has been

(c) a director, trustee, officer or like official of a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which the registration of the charity or association was revoked in the five-year period preceding that time,

(d) an individual who controlled or managed, directly or indirectly, in any manner whatever, a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which its registration was revoked in the five-year period preceding that time, or

## Board of Directors of the Organization

A review of the T3010 returns filed by the Organization over the last five years reveals that both Iain MacDonald and Roger Gushway have been directors on the governing board of the Organization, and therefore hold positions in which they are responsible for controlling and/or managing the charity.

We would point out that Iain MacDonald and Roger Gushway were both directors of a formerly registered charity called the Gateway City Church (the Church) - an organization that had its charitable status revoked for conduct that constituted a serious breach of the Act, following an audit by CRA.

As identified on the CRA website, "The Canada Revenue Agency's (CRA) audit has revealed that the Organization (Gateway City Church) is not complying with the requirements set out in the Income Tax Act. In particular, it was found that the Organization failed to maintain adequate books and records to support its reported revenue and expenditures, as well as to support its charitable activities. The Organization failed to devote its resources exclusively to its own charitable activities and was unable to demonstrate that any of its expenditures were incurred for charitable activities. The Organization was also found to be conferring undue benefits to a director."

These breaches of the charity's obligations under the Act were found by the CRA to be serious enough to warrant revocation of the organization's registration. As such, Gateway City Church was revoked for cause effective May 18, 2013.

It is therefore our position that Iain MacDonald and Roger Gushway both meet the definition of an ineligible individual, pursuant to s. 149.1(1) of the Act. As a result, the CRA may exercise its discretion to suspend or revoke the registration of the Organization.

Under s. 188.2(2), (d), the CRA may suspend the registration of an Organization where an ineligible individual is a director, trustee, officer or like official, or controls or manages the charity directly or indirectly.

Under section 149.1 (4.1)(e) of the Act, the CRA may revoke the registration 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.

Given the fact that ineligible individuals serve as directors and appear to control and manage the Organization, and given the multiple infractions and serious nature of the non-compliance discovered during the audit, there are serious concerns associated with the continued registration of the Organization. Accordingly, it is the CRA's view that its discretion to revoke should be exercised.

However, the purpose of this letter, as stated above, is to present the opportunity for the Organization to respond to our concerns. As such, we would ask that the Organization provide its position as to why the CRA should not revoke its registration. Should the Organization wish to provide reasons why the CRA should not exercise its discretion in this regard, it should do so in its reply to this letter, in the manner described below.

**The Organization's options:**

**a) No response**

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

**b) Response**

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within**

**30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities

Directorate will decide on the appropriate course of action, which may include:

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

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

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My team leader, Gary Huenemoeder, may also be reached at 519-584-3982.

Yours sincerely,

Jim Dozois



Audit Division

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**ITR APPENDIX "A"**

**Victory Christian Centre International of Niagara Inc.**

**COMMENTS ON REPRESENTATIONS OF May 25, 2015**

Below please find:

- 1) Each identified issue of concern,
- 2) A summary of the response from Victory Christian Centre International of Niagara Inc. (the Organization), dated May 25, 2015, and
- 3) The CRA's conclusion, following consideration of the response from the Organization.

The issues of concern are:

- Failure to devote resources to charitable activities: providing an undue benefit
- Failure to maintain adequate books and records
- Failure to file T4 and T4As
- Failure to issue receipts in accordance with the *Income Tax Act* (the Act) and its Regulations
- Failure to file Form T3010, *Registered Charity Information Return* (annual return), as and when required by the Act
- Designation
- Internal controls
- Ineligible individuals

**Issue: Failure to devote resources to charitable activities: providing personal benefits to directors and related persons**

**1. Item - Motor Vehicles (excluding motorcycle and boat)**

The audit found that the Organization paid for expenses relating to a [REDACTED] an [REDACTED] and a [REDACTED] sedan. These vehicles were used by members of the MacDonald family.

During the audit it was stated that the primary use of the vehicles was in support of the church and no amounts were allocated for personal use. However, no documentary evidence was provided to support this position.

**Response:**

With regard to maintaining vehicle logs that could help substantiate the Organization's position, the response noted:

Operating expenses: "without itemized logs of mileage, which, given that there are 5 pastoral staff, and 2 part-time staff who use the two vehicles as needed, would prove a very difficult log to maintain, consider the general responsibilities of each week [sic]."

The Organization's response did acknowledge that there would be some personal use:

"In summary, while personal use of these vehicles takes place, a significant % of the fuel and maintenance charges are used to perform the many duties presented by an active and personally interactive ministry like this one, with upwards of 400 people who attend [sic]."

No documentation was presented that would identify the percentages for charitable or personal use, nor was any documentation provided that demonstrated that the vehicles were used for a charitable purpose.

The Organization's response did not address the findings of the audit that the members of the MacDonald family did not personally own any vehicles, or that the insurance documentation identified only members of the MacDonald family as being insured on the vehicles.

With respect to the [REDACTED] sedan, the Organization stated in its response, [REDACTED] [sic], was a gift to the ministry." This is not consistent with the information provided during the audit; the materials provided by the Organization included documents showing that the vehicle was purchased from a dealership in the United States and that it was financed through the [REDACTED]

Regarding the [REDACTED] sedan, the Organization response stated, "Explain why we did the [REDACTED] deal. Arms length helped us save money on the vehicle [sic]." Information presented during the audit indicated that the name of the "arms-length" individual is [REDACTED] a person related to the MacDonalds. As such, [REDACTED] is considered to be dealing with the MacDonalds and the Organization in a non-arm's length relationship. As no mileage logs were maintained to show who used the vehicles, it is unknown whether an undue benefit was conferred upon [REDACTED]. Additionally, because there was no proper documentation provided, such as mileage logs, there is no support for the position that this vehicle and its related expenses were used in the operations of the Organization.

**Conclusion:**

The Organization's response did not alter our position that it paid for personal expenses relating to the use of the above-mentioned vehicles for members of the MacDonald family. Further, while the Organization's response acknowledged that there was, in fact, personal use of the vehicles, it failed to provide any documentary evidence to show how the vehicles were actually used. Paying for the personal expenses of directors of the Organization constitutes a non-charitable use of the Organization's resources.

**2. Item - Motorcycle**

The audit revealed that the Organization paid for expenses relating to a [REDACTED] motorcycle, including motorcycle accessories and a man's helmet, and that the ownership of the motorcycle was transferred to Iain MacDonald for the amount of one dollar (\$1), an amount far lower than its fair market value at the time of the transfer.

The Organization stated that it was necessary to transfer the motorcycle because it was not possible to insure it through the Organization, and that the motorcycle was a gift from the congregation.

**Response:**

In its response, the Organization stated that the motorcycle was given to Mr. MacDonald as a gift and that "He do [sic] not accept gifts given to him at the church building, presuming they are giving the gift to the office and not to him personally". Additionally, it was stated in the response that the motorcycle was a "sacrificial gift to the ministry from the congregation".

Included in the materials provided by the Organization was a letter dated October 22, 2011, indicating that [REDACTED] had sold the motorcycle to Iain MacDonald for the amount of \$4,500.

The motorcycle was then transferred from [REDACTED] to the Organization, with documentation (certified on March 16, 2012) indicating that the retail sales tax was calculated on \$4,500, which amounted to \$585. This was followed by a transfer of ownership from the Organization to Iain MacDonald, certified on May 10, 2012, with retail sales tax calculated on an amount of \$1.00.

In its response, the Organization states:

Given that half of the [motorcycle's] annual mileage would be on the one main men's ministry bike trip, and then another 25% going to the church events and days, that it can be used for ministry purposes consuming less fuel than the truck; only 25% of the insurance cost should fall to Iain personally.

No documentation was provided to support these figures, nor was the claimed personal use accounted for with respect to the expenses. Additionally, the response contained no documentation to support the statement that the motorcycle could not have been insured through the church.

The response does acknowledge that the motorcycle is registered in the name of Iain MacDonald, "but only for purposes of insurance" and that Mr. MacDonald "is willing to sign a document that says the motorcycle actually belongs to the church."

**Conclusion:**

The Organization's response has not altered CRA's position that expenses related to the operation and use of the motorcycle, including the safety gear and clothing, were covered by the Organization and therefore an undue benefit was conferred upon Iain MacDonald. The response acknowledged that there was personal use, but failed to provide documentary evidence that supports the percentage presented.

**3. Item – Boat**

The audit revealed that the Organization paid for expenses relating to a boat. In discussions with Iain MacDonald, he stated that it was the MacDonald family's boat, that it was stored at their personal residence, and that it was last used in 2011.

**Response:**

In its response, the Organization indicated the only use of the boat was for a "men's ministry guys to go for a ride down the river instead of a typical breakfast meeting" and that the expenses related to a minor repair. In addition, the response stated that the boat:

is not the pastor's personal boat, nor did he tell the auditors that it was, it is, however, stored at their home. It was dropped off at their home and never picked up. Boat is still registered to its previous owner. Not sure what the actual status of the boat is. It is a 1995 boat that does not have any real monetary value.

The response did not offer documentation about the boat's owner, its dollar value, or how it was used.

**Conclusion:**

The response has not altered our earlier position. The Organization failed to demonstrate that costs associated with the boat were in support of its charitable activities, or that an undue benefit was not conferred to the MacDonalds.

As well, despite the claim that the boat "does not have any real monetary value," a review of expense receipts shows that approximately \$4,500 was spent on repairs and accessories for the boat.

Further, the Organization paid for expenses relating to the boat which it does not appear to own; this would constitute a non-charitable use of its resources and providing an undue benefit to the owner of the boat.

#### **4. Item - Meals**

During the audit it was revealed that the Organization claimed amounts for meals, primarily involving Iain and Tina MacDonald. No documentation was provided to demonstrate how these meals related to the activities of the Organization. During the audit we were told that Iain and Tina MacDonald would discuss the church and, as such, the Organization did not consider the claimed amounts personal.

##### **Response:**

The Organization failed to specifically address the issue that paying for meals for Iain and Tina MacDonald, even if church business was discussed, is considered personal.

In the response it was indicated that the meals occurred so that the primary leaders of the various parts of the ministries could get together to discuss the performance of their departments. The response acknowledged that no documentation was kept to demonstrate this.

##### **Conclusion:**

The Organization did not adequately address this issue in its response. It failed to relate any of the claimed meals to the Organization's position that those amounts were incurred in support of charitable activities. No documentation, such as lists of attendees or items discussed, was provided in support of that position. As a result, it remains our view that the claimed meals constitute an undue benefit to the MacDonalds.

#### **5. Item – Trips**

During the audit it was revealed that the Organization paid for costs associated with trips by the MacDonald family. This included amounts for trips to Florida in 2011 and 2012, as well as Algonquin Park and Cypress. Claimed items included airfare, accommodation, and clothing. With regard to the Florida trip, Iain MacDonald acknowledged that this was a personal, family trip.

##### **Response:**

In its response, the Organization did not address the Florida trips.

With regard to the Algonquin Park trip, the Organization stated that, “[t]he gear expenses were for two of the pastors that went on the trip as ministry leaders.” As for a description of the trips, “[e]ach night of the trip had bible study times and personal transformation sessions dealing with ‘men’ subjects.”

The response did not adequately address our position that by paying for clothes and fishing equipment for the Algonquin trips, the Organization covered the costs of personal expenses for its “ministry leaders.”

The following was stated describing the Cyprus trip:

**DVD of announcement about Cyprus.** [REDACTED] Came back early. Starting to look at starting. They were just following God and the congregation and Board were well aware of the exploratory nature of this trip. The Organization can get up to 40 written testimonies of that from all the leadership team at the ministry and board members [sic].

The response referred to “the opportunity to have many bible studies with her [the owner of the spa] and her staff, [REDACTED] and the members of the Organization “took every opportunity to invite people to their table to talk during meals, and hang around whenever possible.”

References were made to a DVD and testimonials, however, we did not receive copies of such material. As well, we did not receive documents such as itineraries or meeting minutes that might show that the primary purpose of the trip was charitable.

### **Conclusion:**

The Organization’s response failed to alter our position that the trips by the MacDonald family, including the Florida, Algonquin Park, and Cyprus trips, were of a personal nature and constituted an undue benefit.

### **6. Item – Clothing**

The audit revealed that amounts were claimed for clothing, including accounts identified as Pastor’s “Clothing Allowance” or “Personal Allowance.”

### **Response:**

In its response, the Organization asserts that the clothing allowance was authorized by the previous accountant and that because Iain MacDonald “is on camera twice a week... a reasonable amount of fresh clothing is part of that presentation.” It stated that the clothing is “more of a costume than clothing as they are specifically chosen for their snappy appearance on camera,” and “the ministry ministers to a largely younger, under

30, demographic and so clothing is an important part of being accepted and relevant to them. For the most part, this was not the pastor's style choice."

**Conclusion:**

The CRA's position on clothing is outlined in Income Tax Folio, S2-F3-C2, *Benefits and Allowances Received from Employment*.

**2.19** Generally, the cost of clothing worn or required to be worn in the performance of employment duties, other than a distinctive uniform or special clothing [including safety footwear and safety glasses], is a personal expense of the employee. Further, the cost of special clothing that can be worn for both personal and employment purposes is also a personal expense.

The information provided by the Organization in its response does not alter our position that the purchase of the clothing, along with any associated cleaning costs, is personal and constitutes an undue benefit.

**7. Item – [REDACTED] Expenses**

The audit identified a number of expenses that appeared personal in nature being recorded on the Organization's [REDACTED] account.

**Response:**

In its response, the Organization indicated that the [REDACTED]

is treated as a cash on hand account, as this is the only way to not make it mess up the bank balance. Donations go into cash on hand, and so do all the appropriate church receipts. Then anything left over is transferred to payroll. All the receipts mentioned in the audit report were already processed through to payroll.

**Conclusion:**

It is unclear from the available records whether all the amounts that appear personal in nature were accounted for as such; there was apparently no division of expenses between those incurred on behalf of the Organization and those incurred for personal use. Even if this proper allocation was done, paying for personal expenses throughout the course of the year constitutes a non-charitable use of the Organization's resources.

Given that the Organization failed to meet its payroll obligations by not issuing any T4 slips, any adjustments to the payroll account would not alter the fact that the Organization paid for these personal expenses.

## **Summary:**

The Organization's response has not alleviated our concerns and our position remains that the Organization failed to devote all of its resources to charitable activities, and it provides personal benefits to its directors and related persons.

### **Issue - Failure to maintain adequate books and records**

#### **1. Item – Entries into the Accounting Records**

The audit revealed that there were gaps in the entries in the Organization's accounting records, most notably in 2011. It appears that the gaps in 2011 general ledger represented entries relating to 2009 and 2010; we determined that entries were made for the 2011 year, followed by entries for 2009 and 2010. Over 98% of the entries for 2011 were made between May 16, 2012, and June 26, 2012. For 2012, all entries were made between June 13, 2013, and July 1, 2013.

In the course of the audit we noted numerous errors and multiple changes to entries.

The audit also revealed that there were multiple adjustments to the donations account and the "Short-term liabilities – Owed to Pastor" account. The impact of these adjustments was a reduction in the amount of reported donations, a decrease in the amount that the pastor owed, and a reduction in the amount reported for the salary expense.

## **Response:**

In its response, the Organization stated:

### **Failure to maintain adequate books and records.**

Entries out of sequence:

**Not sure what all this actually means to the significance of the audit.**

**It looks like entries were made out of sequence???**

**Not sure what the issue with when the entries were made. This is just due to the fact that they didn't have a bookkeeper, and do all the computer entry work at one time of the year [emphasis in original].**

As to errors, the Organization's response stated:

Certainly the accounting irregularities and oversights suggests that the accounts were incorrectly established in the beginning, or perhaps never properly updated. The rapid growth of the ministry has perhaps necessitated having a staff position in charge of all the board meeting and CRA reporting, accounting and receipting duties long ago, rather than having these responsibilities fall to people who already have full schedules with the work of the ministry, people, and vision.

The response concludes with:

In doing their due diligence, [the Organization has] now retained the services of [REDACTED] and [REDACTED] to correct all accounting matters and ensure that the organization operates with in the laws of Ontario Income Tax Act and Regulations.

**Conclusion:**

We acknowledge the Organization's recognition of what it defines as "accounting irregularities and oversights" and the retention of a corporation "to correct" these. However the response has not alleviated our serious concerns regarding the accuracy and reliability of the Organization's books and records. Our position remains that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act.

**2. Item – [REDACTED] Donations**

In the course of the audit we were not able to reconcile the amount of [REDACTED] donations per the [REDACTED] listings provided to the electronic records provided; we were unable to determine if payments represented actual donations or payments for goods or services; and there were multiple adjustments to transaction number 9246.

**Response:**

The Organization's response stated, "**Their [sic] are unable to determine what is meant by this?**" [emphasis in original].

**Conclusion:**

The Organization's response did not address our identified concerns with the [REDACTED] donations. Our position remains that the Organization's books and records are inadequate with respect to the amounts reported as [REDACTED] donations.

**3. Item – General Ledgers**

We noted that the amounts recorded in the general ledgers for both audited years did not reconcile with amounts on the Organization's annual return. In addition, the Organization provided information regarding its donations and revenue on a USB flash drive that the Organization indicated was used to generate the donation receipts. However, the information on the flash drive did not reconcile with the Organization's annual returns.

**Response:**

In its response, the Organization stated:

Again, while this has always seemed to be a complicated process to close the cash accounts at the end of the year and assign any outstanding balances to payroll, this was the way our accountant set up the accounts when the corporation was established. We did not know how to change the setup or that it was done incorrectly.

**Conclusion:**

The Organization has not provided reconciliations of their records to the returns, nor has it provided sufficient specifics to account for the variances. Our position that the Organization's books and records are inadequate because the returns do not reconcile to the records provided remains unchanged.

**4. Item – Board Minutes**

The audit revealed that the Organization did not maintain any directors' or annual general meeting (AGM) minutes and no evidence was provided to show that either directors' or AGM meetings, as required by its by-laws, were held.

**Response:**

As referenced above, the Organization's response did state that the board was aware of some issues, and that perhaps there should have been "a staff position in charge of all the board meeting."

**Conclusion:**

The Organization's response failed to adequately respond to our concern about the lack of meeting minutes that could show the Organization's board members were fulfilling their fiduciary responsibilities, and exercised direction and control of the Organization's resources.

**Summary:**

Given the limited information in the Organization's response, our position that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act remains unchanged.

**Issue - Failure to file T4 and T4As**

The audit revealed that the Organization failed to issue the proper information slips for remuneration and benefits provided to its employees, directors, officers and like

officials. In addition, it revealed the Organization had never met its filing obligations, with respect to remuneration and benefits. The Organization's payroll account was initiated by the CRA during the course of a payroll review resulting in the CRA preparing T4, *Statement of Remuneration Paid* (slip) for 2006 to 2008.

A payroll review was conducted for the years 2011 and 2012, resulting again in the CRA preparing T4 slips.

The audit also revealed that amounts were paid to non-residents, however the Organization failed to withhold amounts as required, and failed to issue the T4A-NR, *Statement of Fees, Commissions, or Other Amounts Paid to Non-Residents for Services Rendered in Canada*, as required.

**Response:**

The response described a system in which had the Organization's pastors "did not take any pay from the [Organization]", but through an "account named 'owed to pastor'...had the loans repaid as the [Organization] was able to do so week by week." Even after "the pastors started receiving a wage, the amounts of the wage followed the same pattern as before."

The Organization's response acknowledged that, "They [the Organization's pastors] were required by CRA to claim this money [received by the pastors from the Organization] as income, but it was not."

The response stated that the Organization was unaware of its obligations regarding payments to non-residents.

**Conclusion:**

The Organization failed to address its extensive history of non-compliance with respect to its payroll obligations. As a result, our position remains unchanged that the Organization is not meeting its obligations under the Act.

**Issue - Issuing receipts not in accordance with the Act and its Regulations**

The audit noted that official donation receipts issued by the Organization do not meet the requirements of Regulations 3500 and 3501 of the Act. The following elements were missing:

- 1) The name, Canada Revenue Agency
- 2) For a cash gift with an advantage received by the donor: the total amount received, the value of the advantage (cash or fair market value) and the eligible amount of the gift for tax purposes
- 3) The amount of the gift
- 4) The name of the donor, including initial
- 5) The full address of the donor
- 6) The place or locality where the receipt was issued

As well, the Organization did not retain at least one exact copy of the donation receipts it issued and the donation information in the Organization's records did not match the information received from a third party. The third party information was reviewed with the Organization during the audit.

**Response:**

The Organization's response stated:

Rarely would anyone give their middle initial, and often address information is either missing or illegible. Often people who just visit the ministry and are not regular attendees do not provide adequate information or contact information that would allow follow up to secure this information. The ministry determined in these cases to produce the receipt in case it is requested.

With respect to the variance between the third party record and the Organization's records, the response stated "but the total third party donation amount was substantially the same." It was also stated that the Organization relied on its software to produce the records "and was unsure of the reason why the amounts would differ in this manner."

**Conclusion:**

The Organization's response did not address the fact that its receipts did not meet the requirements of the Act and its regulations. A charity's records must be able to support the amounts reported on its donation receipts and must accurately reflect the donations and income received.

Following our review of the Organization's response, our position has not changed; the Organization's receipting practices do not meet its responsibilities under the Act.

### **Issue - Failure to file the annual return as and when required by the Act**

The audit identified the following errors in the annual returns filed by the Organization:

- the general ledgers did not reconcile to the annual returns;
- on the annual return for 2012, an amount of \$93,445.10 was reported at both lines 4530 and 4575;
- due to the adjustments to the donations and “owed to pastor” accounts, the amount of donations and salary expense were both understated;
- some items were incorrectly reported on the returns (e.g. prepaid insurance and rent);
- Form T1235, *Directors/Trustees and Like Officials Worksheet*, listed five directors (after re-registration), but it does not appear that the Organization ever had five directors.

The Organization was also asked to provide reconciliations of its records to the annual returns.

The Organization has a history of filing its annual returns late.

#### **Response:**

Regarding the amounts reported at lines 4530 and 4575, the Organization indicated that they misunderstood what was required to be reported at those lines.

With respect to providing information, the Organization indicated that they “...responded to any and all correspondence it has received.”

Regarding the late filed returns, the Organization stated that the returns were prepared, but that the Organization had failed to mail them in.

#### **Conclusion:**

It is our position that the Organization’s statement that it responded to any and all correspondence is incorrect. The Organization was asked to provide reconciliations, including a detailed listing in our February 25, 2014, letter; this information was not provided. Admission of failing to mail a completed return does not adequately address the issue of a history of filing returns late.

It remains our position that the Organization failed to file correct information returns as required by subsection 188.1 (16) of the Act.

### **Issue - Designation**

On March 10, 2012, the registration of the Organization was revoked for failing to file its annual return, as required under subsection 149.1(14) of the Act. At that time, the Organization was designated as a private foundation because of the composition of its board of directors. The Organization subsequently applied and was re-registered as a charitable organization effective that same date.<sup>1</sup>

The change of designation was based on information provided by Iain MacDonald indicating that the number of directors had increased to five and that more than 50% of the directors were dealing with each other in an arm's length relationship.

The audit found no evidence that the two additional directors were elected to the board, nor had the Organization amended its bylaws to reflect such a change. As such, it appears that the Organization does not meet the definition of a charitable organization.

#### **Response:**

The Organization provided the following statement in its response:

"Private foundation: that's what they were, CRA called and changed that."

#### **Conclusion:**

Following our review of the Organization's response, our position remains that the Organization does not meet the definition of a charitable organization.

### **Issue – Internal Controls**

During the audit it was noted that there were no internal controls and that it was Iain and Tina MacDonald, along with their family who operated and were responsible for all aspects of the Organization.

#### **Response:**

This was not addressed in the response.

#### **Conclusion:**

It remains CRA's position that the Organization did not have an adequate system of internal controls in place to ensure that its resources were used for exclusively charitable purposes.

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<sup>1</sup> This change of designation would permit the Organization to continue to carry out business activities, as private foundations are not permitted to engage in any business activity.

### **Issue – Ineligible Individual**

The Organization's annual returns identify Iain MacDonald and Roger Gushway among its directors. Both of these individuals had been directors of a formerly registered charity named the Gateway City Church (formerly Cathedral of Praise). As this Gateway City Church's registered status was revoked for a serious breach of the requirements for registration, it was determined that Mr. MacDonald and Mr. Gushway meet the description of ineligible individuals as defined at 149.1(1) of the Act.

### **Response:**

In its response, the Organization stated:

Roger asked on one occasion if Mr. MacDonald would be willing to serve on his board that never actually ever happened, never attended a meeting or received any communication confirming my position on the board. I had assumed they were just looking for potential candidates but found someone else to fill the position.

Do they have any proof that Mr. MacDonald was actually on the board, or associated in any way. [sic] Just because they send in a form saying that he was on the board, does not mean he knew about it in any way.

### **Conclusion**

The response offered no documentation to support the Organization's position that the information provided to the CRA in the Gateway City Church annual returns was incorrect, nor did it address our concern that Roger Gushway was also identified as a director of Gateway City Church.

As a result, our position has not changed; Iain MacDonald and Roger Gushway meet the description of ineligible individuals in accordance with 149.1(1) of the Act.

### **Summary**

As detailed above, the response, dated May 25, 2015, submitted by the Organization failed to address or adequately address, all of the issues raised and identified in our letter of April 14, 2015. The Organization has not provided additional documentation or materials in support of its position, and the information that we have received has not relieved our concerns regarding the Organization's charitable status.

For the reasons outlined above and in our letter of April 14, 2015, it is the CRA's position that the Organization has failed to meet the requirements for registration as a charitable organization as outlined in section 149.1(1) of the Act and therefore should have its charitable status revoked pursuant to 168(1) of the Act.

## APPENDIX B

### Section 149.1 Qualified Donees

#### 149.1(2) Revocation of registration of charitable organization

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

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

#### 149.1(3) Revocation of registration of public foundation

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

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

#### **149.1(4) Revocation of registration of private foundation**

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

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

#### **149.1(4.1) Revocation of registration of registered charity**

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

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

### **Section 168:**

### **Revocation of Registration of Certain Organizations and Associations**

#### **168(1) Notice of intention to revoke registration**

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.

## **Section 188: Revocation tax**

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

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

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

### **188(1.1) Revocation tax**

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

$$A - B$$

where

A

is the total of all amounts, each of which is

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

B

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

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

### **188(1.2) Winding-up period**

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

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

### **188(1.3) Eligible donee**

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

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the *Excise Tax Act*;

- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the *Charities Registration (Security Information) Act* or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

### **188(2) Shared liability — revocation tax**

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

### **188(2.1) Non-application of revocation tax**

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

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
  - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the *Excise Tax Act* in respect of taxes, penalties and interest, and
  - (ii) filed all information returns required by or under this Act to be filed on or before that time.

### **188(3) Transfer of property tax**

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

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

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

### **188(4) Transfer of property tax**

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”

« *montant de l'actif net* »

“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”

« *valeur nette* »

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

$$A - B$$

where

A

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

B

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

#### **189(6) Taxpayer to file return and pay tax**

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

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

#### **189(6.1) Revoked charity to file returns**

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

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

#### **189 (6.2) Reduction of revocation tax liability**

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

(a) the amount, if any, by which

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

exceeds

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

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

### **189(6.3) Reduction of liability for penalties**

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

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

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

### **189 (7) Minister may assess**

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