



November 10, 2022

**REGISTERED MAIL**

Evan E. West  
Director  
A E West Charitable Foundation  
20 – 27019 Township Road 514  
Spruce Grove AB T7Y 1G6

BN: 82728 8911 RR0001

File number: 3045813

Case number: [REDACTED]

Dear Evan E. West:

**Subject: Notice of intention to revoke  
A E West Charitable Foundation**

We are writing with respect to our letter dated October 7, 2021 (copy enclosed), in which the A E West Charitable Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the periods from January 1, 2012 to December 31, 2016. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated November 24, 2021. Your reply has not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A, attached.

**Conclusion**

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to meet its disbursement quota, failed to devote its resources to a charitable purpose, failed to maintain adequate books and records, issued receipts not in accordance with the Act and/or its Regulations, and failed to comply with the requirements of the Act for its continued registration. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated October 7, 2021, and pursuant to subsections 168(1) and 149.1(4) of the Act,<sup>1</sup> we hereby notify you of our

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<sup>1</sup> During the fiscal periods under audit, the Organization was designated as a Public Foundation, and as such some of the non-compliance cited in our October 7, 2021, letter referenced subsection 149.1(3) of the Act. As the Organization is now designated as a Private Foundation, for the purposes of this letter, we must cite subsection 149.1(4) of the Act, which is the provision of the Act relevant to the Organization's current designation. Please note that the majority of the non-compliance with subsection 149.1(3) of the Act, and

intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), 168(1)(e), and subsection 149.1(4) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

<b>Business number</b>	<b>Name</b>
82728 8911 RR0001	A E West Charitable Foundation Spruce Grove AB

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

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

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

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

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

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

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its related provisions, as identified during the audit, would also have been non-compliance with subsection 149.1(4) of the Act, and its related provisions, had the Organization been designated as a Private Foundation during the fiscal periods under audit.

### Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at **canada.ca/charities-giving**;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

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

Yours sincerely,

*Sharmila P. Khare*

Sharmila Khare  
Director General  
Charities Directorate

### Enclosures

- CRA letter dated October 7, 2021
- Organization's representations dated November 24, 2021
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.: Michelle L. West  
Director





October 7, 2021

Andria D. West  
Director  
A E West Charitable Foundation  
20 – 27019 Township Road 514  
Spruce Grove AB T7Y 1G6

BN: 8272 88911 RR0001  
File #: 3045813

Dear Andria D. West:

**Subject: Audit of A E West Charitable Foundation**

This letter results from the audit of A E West Charitable Foundation (Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the fiscal periods from January 1, 2012, to December 31, 2016.

During the course of the audit, the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act and its Regulations (Act) in the following areas:

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to meet disbursement quota (devotion of resources to charitable purposes)	149.1(1), 149.1(3b), 168(1)(b)
2.	Failure to devote resources to a charitable purpose	149.1(1), 149.1(3), 168(1)(b)
3.	Failure to maintain adequate books and records	149.1(3), 168(1)(d), 168(1)(e), 230(2), 230(4)
4.	Issuing receipts not in accordance with the Act and/or its Regulations	149.1(3), 168(1)(d), Regulations 3500 and 3501
5.	Failure to comply with the requirements of the Act for its continued registration	149.1(3), 168(1)(b)

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

## Background

In a letter dated August 22, 2018 (see enclosed copy), the CRA notified the Organization it had been selected for audit for the fiscal periods ending December 31, 2012, to December 31, 2016. The Organization submitted the documents requested on October 15, 2018.

In order to complete the audit, we requested additional information and documentation on December 17, 2018 (see copy enclosed). The Organization responded, providing additional information on January 15, 2019. We have now completed our review of all the material submitted to us.

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

## Identified areas of non-compliance

### **1. Failure to meet its disbursement quota (devotion of resources to charitable purposes)**

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof.<sup>1</sup>

A registered charity may only use its resources (funds, personnel and/or property) in the two ways, both inside and outside of Canada: for charitable activities undertaken by the charity itself under its continued supervision, direction and control, and by gifting funds to "qualified donees" as defined in the Act.

Subsection 149.1(1) of the Act describes the disbursement quota, a minimum spending requirement of registered Canadian charitable organizations. The disbursement quota is calculated at a rate of 3.5% of a registered charity's property **not** used directly in charitable activities or administration. The disbursement quota is calculated based upon an average of the value of applicable property maintained during the 24 months before the beginning of the fiscal period (i.e. amounts reported on Line 5900 of the Form T3010, Registered Charity Information Return).<sup>2</sup>

## Audit Findings:

The Organization distributed funds to qualified donees in each fiscal year of the audit period, with the exception of fiscal period ending December 31, 2013. The amounts contributed in the 2012, 2014, 2015 and 2016 fiscal years cumulatively totalled \$11,176. Based upon information provided in its Form T3010s, the accumulated disbursement quota (DQ) obligation of the Organization during the same timeframe totalled \$11,934.

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<sup>1</sup> Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue, [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

<sup>2</sup> See [Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation.html](http://Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation.html)

While a net shortfall of \$759 may appear minor when compared to the cumulative applicable DQ, the Organization failed to provide adequate documentation to substantiate the eligibility and accuracy of the investment write-down adjustments it had made (see Section 3, below). As a result, we performed a DQ calculation to identify the impact of the asset write-downs and determine the total scope of DQ shortfall applicable in the audit period. The Organization's DQ shortfalls per fiscal period, based on this calculation, are summarized below:

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Line 5900	0	21,677	90,847	138,097	137,863
DQ requirement	0	759	3,180	4,833	4,825
Gifts to QD	<u>1,400</u>	<u>0</u>	<u>1,780</u>	<u>4833</u>	<u>3,163</u>
DQ shortfall	0	759	1,400	0	1,662
DQ excess	1,400	0	0	0	0

The Organization distributed the minimum amount required to qualified donees during its 2014 fiscal year, even when factoring in the DQ excess realized in the 2012 fiscal year. Subsection 149.1(20) of the Act defines the allowances for carry-forward and carry-back of DQ excesses as a maximum carry-back of one fiscal year and maximum carry-forward of five fiscal years. When considering this allowance, we have calculated the Organization's net shortfall in 2014 to be \$759, with an additional shortfall of \$1,662 in 2016.

Note: although outside the audit period, DQ shortfalls applicable to fiscal periods ending December 31, 2017, and December 31, 2018, were confirmed in the amounts of \$3,697 and \$3,999 respectively, which demonstrates a continuing trend of non-compliance with the DQ requirements.

Summary:

The disbursement quota requirements for registered charities are designed to ensure that the benefit of the tax assistance provided to such organizations and to their donors is passed on to those in need of assistance, through the charitable activities of such organizations.

It is our view that the Organization has failed to comply with the disbursement quota requirements outlined in subsection 149.1(1) of the Act, namely that its resources have not been applied, expended or utilized in a manner shown to constitute a charitable use of its resources. Consequently, there are grounds to revoke the Organization's registration as a public foundation under paragraphs 149.1(3)(b) and 168(1)(b) of the Act, as the Organization has failed to meet its disbursement quota [149.1(3)(b)], and therefore no longer complies with the requirements of the Act for its registration as such [168(1)(b)].<sup>3</sup>

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<sup>3</sup> While the Organization is now designated as a private foundation, during the fiscal periods under audit it was designated as a public foundation, and as such we are required to cite the provisions of the Act relevant to the non-compliance at the time the non-compliance took place. However, even if the Organization had been designated as a private foundation during the fiscal periods under audit, the non-compliance issues identified with respect to the DQ shortfalls would still have constituted grounds for revocation under paragraph 149.1(4)(b) of the Act.

## 2. Failure to devote resources to charitable purposes

To comply with the requirement that it devote all of its resources to charitable activities carried on by the organization itself, a registered charity may only use its resources (funds, personnel and/or property) in two ways:

- for its own charitable activities - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to "qualified donees" as defined in the Act.<sup>4</sup>

A charitable activity is one that directly furthers a charitable purpose, which requires a clear relationship and link between the activity and the purpose it purports to further. The Organization was originally registered as a public foundation with formal re-designation to a private foundation completed effective January 1, 2017. The Act permits public foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(3)(b.1) of the Act provides that a public foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.

### Fiduciary Duty

By virtue of their unique role, and as a means of "encouraging activities which are of special benefit to the community",<sup>5</sup> registered charities receive privileged treatment under the Act. In addition to the income tax exemption that is also granted to non-profit organizations, registered charities are further afforded the advantage of being able to issue official donation receipts whereby individual donors are eligible to receive tax credits for contributions they make to registered charities.

As a result, the Canadian public contributes to every registered charity by virtue of the loss of tax revenue resulting from the income tax incentives that encourage charitable giving. The CRA therefore has a fundamental interest in ensuring that monies raised from the public are used to fulfill their intended purposes.

An organization registered under the Act is required to be bona fide, meaning that it must be established and operated to confer a tangible or objectively measurable benefit upon the public. Further, the courts have placed extensive responsibility, known as fiduciary duties, on the directors of charities. As stated in CRA publication Registered Charities Newsletter (No. 21 - 2005):

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<sup>4</sup> A "qualified donee" means a donee described in subsection 149.1(1) of the Act, or in CRA's Guidance document titled CG-010, Qualified donees, available on the CRA website.

<sup>5</sup> Vancouver Society, *ibid.* note 2, para.170

“...regardless of the province or territory in which they operate, directors of charities should not be passive. They have a fiduciary responsibility to ensure that a charity is being operated in the public interest. They have a duty of diligence that requires them to be knowledgeable about the workings of the charity and ensure that the charity and its assets are cared for properly.”<sup>6</sup>

Further, Registered Charities Newsletter (No. 22 – 2005), defines fiduciary duty responsibilities as:

“...a duty to act for someone else’s benefit exclusively. It is the highest standard of duty implied by law (e.g. trustee, guardian). For charities, this means to accept and hold a public trust to maintain, preserve and develop the organization’s resources to be used for charitable purposes, to ensure that the organization’s activities remain charitable, and to manage the organization for the benefit of the public.”<sup>7</sup>

Generally, there is an expectation that directors and officers will ensure that the organization achieves its purposes, complies with the laws that apply to the organization, and operates in a fiscally prudent, effective and efficient manner.

#### Investment of Charitable Resources

A registered charity may invest its surplus funds or assets for purposes of generating additional revenues to be used for its otherwise charitable activities. However, charity law dictates that a charity’s assets must be managed so as to obtain the best return within the bounds of prudent investment principles. While a charity may invest in a for-profit business, its directors / trustees need to satisfy themselves both that the investment represents a prudent use of the charity’s assets and that no unacceptable or undue private benefit is conferred on the taxable corporation.

Directors and trustees must handle the charity’s property with the care, skill and diligence that a prudent person would use. They must treat the charity’s property the way a careful person would treat their own property and must always protect the charity’s property from undue risk of loss.

The heightened duty of care of charities’ directors is outlined in subsection 148(1) of the Canada Not-for-Profit Corporations Act, which states:

“Every director and officer of a corporation in exercising their powers discharging their duties shall

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.”

In evaluating the efforts undertaken by the directors / trustees of a registered charity to fulfil their fiduciary duties and practice reasonable and prudent use of charitable resources, several factors are considered, including in part:

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<sup>6</sup> See [Canada.ca/en/revenue-agency/services/forms-publications/publications/charitiesnews-21/archived-registered-charities-newsletter-no-21-winter-2005.html](http://Canada.ca/en/revenue-agency/services/forms-publications/publications/charitiesnews-21/archived-registered-charities-newsletter-no-21-winter-2005.html)

<sup>7</sup> See [Canada.ca/en/revenue-agency/services/forms-publications/publications/charitiesnews-22/archived-registered-charities-newsletter-no-22-spring-2005.html](http://Canada.ca/en/revenue-agency/services/forms-publications/publications/charitiesnews-22/archived-registered-charities-newsletter-no-22-spring-2005.html)

- General economic conditions
- The possible effect of inflation or deflation
- The expected tax consequences of investment decisions or strategies
- The expected total return from income and appreciation of capital
- Need for liquidity, regularity of income and preservation or appreciation of capital
- An asset's relationship or value to the purposes of the charity

Generally, every charity which engages in investment activities should maintain an investment plan or policy that takes into account a reasonable assessment of risk and return.

Audit Findings:

Our review of the Organization's Form T3010s and financial statements suggests that the Organization has not complied with subsection 149.1(1) of the Act. The audit findings have raised serious concerns with respect to the Organization's investment activities, including a failure on the Organization's part to demonstrate that it has been diligent in managing its resources. It appears, based on our findings, that during the fiscal periods under audit, the Organization devoted substantially all of its assets toward the acquisition of long-term investments, and as a result it failed to disburse<sup>8</sup> the minimal amounts required of it in furtherance of its charitable purposes.

The Organization appears to have acquired an investment in property during the fiscal period ending December 31, 2012, and then proceeded to acquire marketable securities in two public companies during the fiscal period ending December 31, 2013. In each case, the investment assets were acquired by the Organization from [REDACTED] who is a member of the Organization's Board of Directors. In order to facilitate the transactions, [REDACTED] donated funds to the Organization, which were then directly applied toward the acquisition of investment assets owned by [REDACTED].

On January 12, 2012, the Organization received a donation from [REDACTED] in the amount of \$43,600, which was then used on January 17, 2012, to acquire property from [REDACTED] in the amount of \$42,500. Similarly, on June 18, 2013, the Organization received a donation in the amount of \$40,000, and a loan in the amount of \$55,000, both from [REDACTED]. These funds were then used, on the same day, to acquire marketable securities (shares in [REDACTED] and [REDACTED] from [REDACTED] in the amount of \$95,000.

In its October 15, 2018, representations, the Organization stated that the \$55,000 loan had been converted to a donation during the fiscal period ending December 31, 2014 (recognized on receipt number 4, dated January 1, 2014). However, as the Organization did not provide a written agreement regarding the loan received from [REDACTED] we cannot determine whether the loan was, in fact made, or what the conditions of repayment were.

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<sup>8</sup> See Section 1 above, Failure to meet disbursement quota.

The Organization has demonstrated a lack of adequate segregation of duties and internal controls in relation to the applicable non-arm's length transactions. It is not an acceptable segregation of duties for [REDACTED] - a member of the Organization's board - to accept donations from [REDACTED] and then use the funds acquired through those donations to purchase shares and other investment assets, on behalf of the Organization, from himself via trust agreements signed by [REDACTED]

Further, following the acquisition of the investment assets from [REDACTED], the Organization recorded investment loss expenses and reduced the book value of its investment assets during its fiscal periods ending December 31, 2015, and December 31, 2016. The value of the marketable securities were reduced from \$95,000, as of June 18, 2013, the date of purchase, to \$2, as of June 30, 2015 (per "asset review and directors meeting" minutes dated December 7, 2015), and the investment in property was reduced from \$42,500, as of January 17, 2012, to \$21,250 as of December 15, 2017 (per "asset review and directors meeting" minutes dated December 7, 2017).

The documentation provided (consisting of the single page meeting minutes applicable to 2015 and 2017) confirmed the Organization effectively reduced the value of each of its marketable securities to the nominal value based solely on speculation unsupported by independent, substantiating documentation. The reduction of the real estate investment property to 50% of its originally stated value (\$21,250) was also unsupported.

The Organization failed to provide information or demonstrate internal considerations concerning the intended duration of its investments and the rate of return expected. No information has been shared with, or obtained by, the CRA that indicates how the decision to invest the Organization's funds was reached, including whether the decision was reached in fiscally prudent manner. The Organization provided no meeting minutes, investment policy or other secondary documentation to demonstrate consideration of defined investment criteria, whether a review of the financial integrity of the company in which it invested its resources was conducted, or whether the investments were in fact being actively monitored on a regular basis to take into account potential losses or gains of charitable resources. The Organization failed to adequately demonstrate a prudent and sound evaluation process supported by independent documentation in determining the value of the assets to be written-down.

Additionally, the scope of the Organization's financial activities during the audit period indicate it operated primarily in furtherance of a collateral, non-charitable purpose, namely the unrelated business activity of conducting investment transactions. The contrast of resources devoted to its investments versus the resources devoted to its charitable purposes are summarized as follows:

<u>Fiscal period ending</u>	<u>Total investment asset acquisition</u>	<u>Total charitable spending (gifts to qualified donees)</u>	<u>Minimum DQ required</u>
2012-12-31	42,500	1,400	0
2013-12-31	95,500	0	759
2014-12-31	0	1,780	3,180
2015-12-31	0	4,833	4,833
2016-12-31	0	3,163	3,163
	<u>137,500</u>	<u>11,176</u>	<u>11,935</u>

Summary:

The Organization has not devoted its resources to charitable activities during the period under audit. It is therefore our position that the Organization has failed to operate exclusively for charitable purposes or gift to qualified donees. The directors of the Organization failed to fulfill their fiduciary responsibilities and ensure the Organization was operated in the public interest, and managed for the benefit of the public.

It is our determination that there are grounds for the revocation of the Organization's registration for failing to be "operated exclusively for charitable purposes", pursuant to the definition of charitable foundation in paragraph 149.1(1) of the Act.

Under paragraph 168(1)(b) of the Act, the registration of a charity may be revoked if it ceases to comply with the requirements of the Act for its registration. It is our position that the present case consists of material non-compliance. For this reason, it appears there are grounds to revoke the Organization's charitable status under paragraph 168(1)(b) of the Act.

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

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

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

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

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

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations and the law, which have held that:



- it is the responsibility of the registered charity to prove that its charitable status should not be revoked,<sup>9</sup>
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto,<sup>10</sup> and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.<sup>11</sup>

#### Audit Findings:

The audit revealed the Organization failed to satisfy the requirements of paragraph 230(2)(a) of the Act as the documentation maintained to support the information reported in its books and records was incomplete and / or inadequate. The documentation provided did not allow us to verify, with any accuracy, the eligibility, and reasonability of the impairments applied to the investment assets acquired during the period under audit.

The Organization was required to obtain an independent valuation of the marketable securities and real estate investments it held prior to any impairment of the charitable assets it owned. The unsubstantiated write-downs required further documentary support when considered in the context of the potential impact such investment asset adjustments would have on the Organization's disbursement quota obligations.

The books and records provided during the audit did not include any supporting documentation to demonstrate the Organization had in place sufficient internal controls. No meeting minutes or director's resolutions were provided to demonstrate that the Organization's Board of Directors meets on a regular basis to discuss relevant issues or oversee its operations. The books and records also failed to demonstrate proper and adequate segregation of duties or access restrictions to the Organization's resources.

#### Internal Controls

A charity's Board of Directors (Board) is responsible for establishing and maintaining an adequate internal control structure that minimizes the risks associated with any misstatement in the financial reporting of the organization, safeguards the organization's assets, and prevents or detects error and fraud. The Board must ensure that sufficient internal controls exist around the accounting system, the maintenance of the accounting records, the selection and application of internal policies and procedures, and the segregation of duties.

The books and records provided during the audit did not include supporting documentation demonstrating sufficient internal controls were maintained by the Organization. The Organization failed to demonstrate internal evaluations, consideration and approval protocols in the application of charitable resources.

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

<sup>10</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93.

<sup>11</sup> See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.

The Organization also failed to maintain documentation regarding the review, vetting, and verification policies and procedures undertaken by its representatives in the approval and authorization of its investment decisions, financial record keeping and reporting.

The books and records failed to demonstrate that the Organization established and maintained adequate access restrictions to its resources. Donation receipted funds contributed to the Organization by [REDACTED], who, as noted earlier, is a member of the Organization's Board of Directors, were applied toward the purchase of investments owned by [REDACTED].

In the absence of meeting minutes, director resolutions, or other secondary documentation demonstrating approval for the transactions by a quorum of the board of directors, the donation receipted contributions may be interpreted as ineligible, directed donations. The declaration of trust documents establishing that the investments purchased from [REDACTED] were to continue to be held by [REDACTED] in trust for the Organization, were signed on behalf of the Organization by [REDACTED] solely.

In addition, the books and records did not include a copy of a written loan agreement between [REDACTED] and the Organization, outlining terms and conditions of the non-arm's length liability totalling \$55,000, that the Organization reported in the fiscal period ended December 31, 2013.

Further, with respect to the donation receipt issued in acknowledgement of the loan balance, the Organization failed to provide documentation demonstrating payment of the outstanding liability followed by a subsequent contribution of funds from the donor to the Organization to establish that an exchange of property actually occurred, as required within the meaning of a gift.<sup>12</sup>

Donation receipts issued to [REDACTED] (numbered 5 through 7) were identified as signed by a representative with a non-arm's length relationship to the donor ([REDACTED]), which further demonstrates the lack of segregations of duties followed by the Organization during the period under audit.

#### Investment of Charitable Resources

The Organization failed to provide information detailing the considerations, evaluations and approvals undertaken by its Board with respect to the use of its charitable resources for non-charitable purposes. The Organization failed to provide information concerning the intended duration and expected return of the purchased investment assets (real property, shares and subscription units).

The investment asset acquisitions reported in the fiscal periods ended December 31, 2012, and December 31, 2013, were facilitated by non-arm's length representative [REDACTED] and used funds contributed by [REDACTED] to purchase assets owned by [REDACTED]. This raises serious concerns regarding the lack of internal controls within the Organization, as well as potential conferral of undue and/or private benefits.

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<sup>12</sup> See [Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift.html](http://Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift.html)

Documentary support was specifically required to support the write-down in value of the Organization's investment assets and concurrent loss on investment expense amounts reported. The Organization provided a document identified as "asset review and directors meeting", dated December 7, 2015, wherein the write-down of marketable securities investments applied was supported by the following statement of internal evaluation:

- [REDACTED]  
"Significant impact to this start up energy company due to the most significant downturn in oil and gas industry in over 40 years and uncertainty with change in government. Recommendation is to write down this asset to \$1 until formal notice of what will happen to [REDACTED] long term."
- [REDACTED]  
"Significant impact to this start up petroleum refinery due to the most significant downturn in oil and gas industry in over 40 years and uncertainty with change in government. Recommendation is to write down this asset to \$1 until formal notice of what will happen to [REDACTED] long term."

The Organization also provided a document identified as "asset review and directors meeting" dated December 7, 2017, wherein the write-down of investment in property applied was supported by the following statement of internal evaluation:

- [REDACTED]  
"Due to notification that [REDACTED] company is in bankruptcy protection (May 2017), there is doubt in the ability to recover the original expectation of asset value in an exit. Recommendation is to write asset down to the original investment purchase from 2002 until we receive word that assets have sold or company is out of bankruptcy protection."

As a result of this review the recommendation and subsequent actions of the directors of AE West Charitable Foundation will be write down [REDACTED] to the original investment that the original owner invested as of December 15, 2017."

Our review identified a discrepancy between the Organization's explanation for its write-down of the real estate investment property, specifically in the context of the [REDACTED] seeking bankruptcy protection. The meeting minutes provided to the CRA were dated December 7, 2017, and the [REDACTED] received bankruptcy protection under the Company Creditors Arrangement Act effective April 28, 2017, however, the Organization recorded the write down in the fiscal period ending December 31, 2016.

While By-Law 14.5 of the Organization's by-laws states "the Board on behalf of the Corporation may acquire, ... shares in and securities of other corporations, ... for the further attainment of the Corporation's objects", By-Law 14.7 clearly indicates that any such investment must be done in a prudent manner which would allow the furtherance of a public good and provides a social benefit:

"The Corporation may invest and deal with the monies of the Corporation not immediately required ... In investing the funds of the Corporation, the Board ... may make investments which in its opinion are prudent. In determining whether an investment is prudent, the Board may consider the extent to which an investment furthers objects and funding of the Corporation as well as public good and social benefit in addition to issues of pure economic return."

With respect to these two statements, which are contained in the Organization's governing documents, the Organization is required to maintain adequate books and records to demonstrate the described considerations were fulfilled.

#### T4As

The audit revealed that for the fiscal periods under audit, the Organization did not issue or submit T4/T4A slips for compensation paid. The representations received from the Organization stated that the consulting fees were paid in relation to services provided by Andria West, who is a member of the Organization's Board of Directors. The Organization provided an annual "Appointment of an accountant" document for the fiscal periods ended December 31, 2014, through December 31, 2017, each of which identified [REDACTED] as the authorized party for preparation of the annual Form T3010. However, the Organization failed to provide copies of invoices or a written agreement outlining the terms and conditions of the compensation remitted to a non-arm's length representative.

The Organization failed to prepare a T4A Income reporting slip or T4A Summary in relation to the fees for services reported as received from Andria West. The outstanding income reporting documentation is summarized as follows:

<u>Fiscal Year End</u>	<u>Consulting Fees</u>
2012-12-31	2,150
2013-12-31	1,050
2014-12-31	2,500
2015-12-31	2,500
2016-12-31	2,500

#### Summary:

The Organization did not maintain or provide adequate documentary evidence to support the asset amounts reported in its Form T3010s for the periods under audit. As such, we are unable to substantiate that the Organization is devoting its resources to charitable activities as required by the Act and common law.

Accordingly, it appears that the Organization may not be exercising due care with respect to the completeness and accuracy of its books and records to substantiate the use of its charitable resources, or in support of adequate internal governance to safeguard its charitable resources. It is our position the Organization has failed to demonstrate that it maintains adequate books and records as required.

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

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

A registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires the registered charity to ensure the information on its official donation receipts is accurate.

Paragraph 230(2)(b) of the Act provides that every registered charity shall "keep records and books of account [...] at an address in Canada recorded with the Minister [...] [including] a duplicate<sup>13</sup> of each receipt containing prescribed information for a donation received by it"

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

#### Audit Findings:

##### **i) Gift of Property:**

The audit revealed that the Organization issued an official donation receipt of \$55,000 for a loan received from [REDACTED] in fiscal period ended December 31, 2013.

The Organization's duplicate copy of receipt number 4, in the amount of \$55,000, included an attachment described as "back up information on issuing charitable donation receipt #4" dated January 1, 2014, which confirmed that a \$55,000 debt obligation owed to director [REDACTED] (effective December 31, 2013) was subsequently satisfied January 1, 2014, via the issuance of a donation receipt "as full payment of the debt obligation."

The Act does not contain a definition of the term "gift" which is used in connection with the measures put forward to encourage gifts to qualified donees under the Act. The definition used for purposes of the Act can be summarized as follows: "...a gift is a voluntary transfer of property without valuable consideration. However, a transfer of property for which you received an advantage is still considered a gift for purposes of the [Act] as long as the [CRA] is satisfied that the transfer of property was made with the intention to make a gift."<sup>14</sup>

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<sup>13</sup> The definitions found in general language dictionaries and in law dictionaries are sufficiently broad to include a "duplicate of a receipt" in almost any form.

<sup>14</sup> See P113 – Gifts and Income Tax

In circumstances where a creditor provides a loan to a charity, a charity cannot simply issue an official donation receipt to the creditor for the amount of the outstanding loan balance, in lieu of repaying the liability.

The Organization and the creditor are required to proceed by way of an exchange of cheques, that is, the charity issues a cheque to the creditor satisfying the debt obligation, and the creditor then writes a cheque to the charity for an equivalent or lesser amount. By using the cheque-exchange method, a charity will have proper financial records justifying the receipt it issues to the donor and the donor can document that he or she has transferred eligible property to the charity.

As such, the Organization failed to demonstrate that the donation receipt issued in recognition of the outstanding debt obligation liability represented a receipt issued in recognition of an eligible gift. In the absence of any supporting documentation, the reported transaction lacks the required transfer of property element as outlined in CRA's definition of an eligible gift.

ii) Internal Controls / Segregation of Duties:

In addition, the Organization failed to establish proper internal controls and segregation of duties as donation receipts numbering 5 through 7, issued to [REDACTED], were signed by a representative of the Organization with a non-arm's length relationship to the donor, which demonstrates a lack of adequate internal controls and segregation of duties in the receipting procedures and protocols of the Organization.

Summary:

It is our position, based on the non-compliance issues identified above, that the Organization has issued receipts otherwise than in accordance with the Act. Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to an Organization that the Minister proposes to revoke its registration because the Organization has issued a receipt for a gift otherwise than in accordance with the Act and the Regulations or that contains false information.

**5. Failure to comply with the requirements of the Act for its continued registration**

Subsection 149.1(1) of the Act details the specific requirements of registered charities by type (charitable organization, public foundation, private foundation). Specifically, clauses 149.1(1)(b)(i)(A) and (B) of the Act state the following:

"Public foundation means a charitable foundation

(b) that is not controlled directly or indirectly in any manner whatever

(i) by a person

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

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

Audit Findings:

In the fiscal periods ending December 31, 2012, and December 31, 2013, respectively, the Organization received contributions from [REDACTED], who was at those times a member of the Organization's Board of Directors. The receipted contributions received from [REDACTED] in the fiscal period ended December 31, 2012, in the amount of \$45,100, represented an amount in excess of 100% of the Organization's total assets as of December 31, 2012. The donation receipted and "loan" contributions received from [REDACTED] in the fiscal period ended December 31, 2013, cumulatively totalling \$95,000, represented 68% of the Organization's total assets as of December 31, 2013. The amounts contributed by a person who directly controls the Organization were in violation of the defined limitations of a public foundation, as detailed above.

Summary:

It is our view that the Organization failed to comply with the requirements of the Act, in that in as a result of the donations received from [REDACTED] it no longer meets the Act's definition of a public foundation, in that resources in excess of 50% of the total capital of the Organization were contributed by a director of the charity. Under subsection 149.1(3) of the Act, the Minister may revoke the registration of the Organization, because it has failed, as described at paragraph 168(1)(b) of the Act, to comply with the requirements of the Act for its registration as such.

**The Organization's options:**

**a) Respond**

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

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



**b) Do not respond**

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

If you appoint a third party to represent you in this matter, please send us a written authorization with the party's name, contact information, and clearly specify the appropriate access granted to the party to discuss the file with us. For more information on how to authorize a representative, go on our website at [Canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.html](http://Canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.html).

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers below. My manager, Julie McCaffrey, may also be reached at 613-850-7091.

Yours sincerely,



Fereshta Hedjran  
Assisted Compliance Section  
Charities Directorate, Canada Revenue Agency

Telephone: 343-551-3503  
Toll Free: 1-800-267-2384  
Facsimile: 613-954-8037  
Address: Suite 1306  
Tower A, Place de Ville  
320 Queen Street  
Ottawa ON K1A 0L5

Enclosures:

- CRA letter dated August 22, 2018
- CRA letter dated December 17, 2018

c.c.: Michelle L West





Andria D. West  
Director  
A E West Charitable Foundation  
20 - 27019 Township Road 514  
Spruce Grove AB T7Y 1G6

BN: 827288911RR0001  
File #: 3045813

August 22, 2018

**SUBJECT:     Audit of A E West Charitable Foundation**  
**Request for information and documentation**

Dear Andria D. West:

We are writing to inform you that the A E West Charitable Foundation (the Organization) has been selected by the Canada Revenue Agency (CRA) for an audit as a registered charity under the Income Tax Act.

In order to complete our audit, we require the Organization to provide our office with the following information and documentation relating to its **fiscal periods ending January 1, 2012 to December 31, 2016:**

**Official donation receipts issued for income tax purposes**

1. Please provide us with a listing of all official donation receipts issued for donations received during the above-mentioned fiscal periods. For ease of reference, this listing should include the following elements: the receipt number (in sequential order), the donor's name, the amount of the donation, and the total amount of donations received for each fiscal period. The list should also include the receipt numbers of any lost or cancelled receipts and identify the receipt that was issued to replace the lost or cancelled receipt.
2. In addition to the listing above, please provide us with a copy of official donation receipts issued to all donors during the above-mentioned fiscal periods.

### **Assets on the Statement of Financial Position**

3. On the Statement of Financial Position for fiscal period ending December 31, 2012, the Organization reported property in the amount of \$42,500. Please provide us with documentation regarding this property. The documentation should at least include the following but not limited to; Who did the Organization acquire the property from? Was this party at arm's length with the Organization? Did the Organization issue an official donation receipt in relation to this property? To whom? Did the Organization acquire the property at fair market value? What steps did the Organization take to determine fair market value of the property?
4. On the Statement of Financial Position for fiscal period ending December 31, 2013, the Organization reported Marketable Securities in the amount of \$95,000 and Advances from Related Parties in the amount of \$55,000. Who made the loan that the Organization? Was this loan used to make part of the Marketable Securities purchase as the revenue of the Organization only total \$40,000 in that fiscal period? Both the Marketable Securities and Advances from Related Parties are reported as non-arm's length transactions on Form T3010, Registered Charity Information Return. Please provide us with documentation regarding the Marketable Securities and Advances from Related Parties transactions. The documentation should include but not limited to the following; Did the Organization acquire the Marketable Securities at fair market value? What steps did the Organization take to determine fair market value of the Marketable Securities?
5. Under Assets on the Statement of Revenues and Expenditures for fiscal period ending December 31, 2015, the Organization reported a write-down of the investment in the amount \$94,998. Please provide us with a detailed explanation of the reason behind the write-down along with all supporting documentation.

### **Notes to Financial Statements**

6. On the Statement of Revenue and Expenditures for fiscal period ending December 31, 2016, the Organization reported a Loss on Investment in the amount \$21,250 and referred to the Notes to Financial Statements. The Notes to Financial Statements for fiscal period ending December 12, 2016 are not clear. Please clarify what is meant by "Land Investment Company under Bankruptcy Protection, hopeful for at least a 50% recovery of investment" and provide us with all related supporting documentation.

### **Consulting Fees**

7. As of fiscal period ending December 31, 2014 and onward the Organization reports Consulting Fees as an expense. What are the Consulting Fees in relation to? How do the Consulting Fees further the charitable purpose of the Organization? What benefits do the Consulting Fees provide to the Organization? Please provide us with a detailed explanation relating to the Consulting Fees along with all supporting documentation.

### **Accounts Payable**

8. As of fiscal period ending December 31, 2012 and onward the accounts payable of the Organization has continuously increased. Please provide us with a detailed explanation of the reason behind the increase of the accounts payable along with all supporting documentation.

### **Directors List**

9. Please provide us with a copy of the current list of directors.

### **Board Meeting Minutes**

10. Please provide us with all the board meeting minutes from the time that the board of directors were changed, up until the most recent board meeting.

The Organization must submit all requested information and documentation outlined above within **30 days of the date of this letter** to the address below. Failure to respond within the required timeframe could potentially result in the revocation of the Organization's registered status. Also, be advised that additional information may be requested during the audit.

The Act requires, under subsection 230(2), that registered charities maintain adequate books and records of account at a single address in Canada that is registered with the CRA. This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act as well as to enable the CRA to verify the accuracy of reported information through an audit.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to a registered charity that she proposes to revoke its registration if it fails to comply with or contravenes section 230 of the Act dealing with books and records.

Please note that the confidentiality provisions of the Act restrict us to discussing the issues in this letter with an authorized representative only. Normally this would be an individual listed as a current director/trustee on the Form T1235, Directors/Trustees and Like Officials Worksheet, which is included with Form T3010, Registered Charity Information Return, on file with the Canada Revenue Agency.

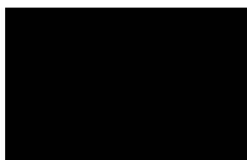
If there has been any change in directors/trustees of the Organization since it filed its last information return, please forward a copy of the revised directors/trustees list, found on our website above, signed by an authorized representative of the Organization.

If a third party is representing the Organization (not currently listed on file with the CRA), we require written authorization naming the individual, signed by an authorized representative of the Organization, explicitly authorizing that individual to discuss the Organization's file with us. Alternatively, you may complete and forward a copy of Form RC59, Business Consent for Access by Telephone and Mail, which is also available on our website.

Information affecting registered charities regarding the latest changes to the law, the new or revised publications, policies, etc. are all available on our website at **[canada.ca/charities-giving](http://canada.ca/charities-giving)**.

If you have any questions or require further information or clarification, please contact me at 613-670-0739.

Yours sincerely,



Fereshta Hedjran  
Assisted Compliance Section  
Compliance Division  
Charities Directorate  
Canada Revenue Agency  
Suite 1306  
Tower A, Place de Ville  
320 Queen Street  
Ottawa ON K1A 0L5



Andria D. West  
Director  
A E West Charitable Foundation  
20 – 27019 Township Road 514  
Spruce Grove AB T7Y 1G6

BN: 827288911RR0001

File #: 3045813

December 17, 2018

**SUBJECT:   Audit of A E West Charitable Foundation**  
**Request for additional information and documentation**

Dear Andria D. West:

Further to our telephone conversation on December 13, 2018, we are in receipt of the documentation you submitted dated October 15, 2018, pertaining to the audit of A E West Charitable Foundation (the Organization); however in order to complete our audit, we require the Organization to provide our office with the following additional information and documentation relating to its **fiscal period ending January 1, 2012 to December 31, 2016:**

**Books and Records**

1. Please provide us with a copy of all the Organization's bank statements, cancelled cheques (front and back) and deposit slips for the above-mentioned fiscal period.

The Organization must submit all the information and documentation outlined above within **30 days of the date of this letter** to the address below. Failure to respond within the required timeframe could potentially result in the revocation of the Organization's registered status. Also, be advised that additional information may be requested during the audit.

**Reminder:**

The Act requires, under subsection 230(2), that registered charities maintain adequate books and records of account at a single address in Canada that is registered with the CRA. This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act as well as to enable the CRA to verify the accuracy of reported information through an audit.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to a registered charity that he proposes to revoke its registration if it fails to comply with or contravenes section 230 of the Act dealing with books and records.

Please note that the confidentiality provisions of the Act restrict us to discussing the issues in this letter with an authorized representative only. Normally this would be an individual listed as a current director/trustee on the Form T1235, Directors/Trustees and Like Officials Worksheet, which is included with Form T3010, Registered Charity Information Return, on file with the Canada Revenue Agency.

Consequently, if there has been any change in directors/trustees of the Organization since it filed its last information return, please forward a copy of the revised directors/trustees list, signed by an authorized representative of the Organization.

If a third party is representing the Organization (not currently listed on file with the CRA), we require written authorization naming the individual, signed by an authorized representative of the Organization, explicitly authorizing that individual to discuss the Organization's file with us. Alternatively, you may complete and forward a copy of Form RC59, Business Consent for Access by Telephone and Mail, which is also available on our website.

Information affecting registered charities regarding the latest changes to the law, the new or revised publications, policies, etc. are all available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving).

If you have any questions or require further information or clarification, please contact me at 613-670-0739.

Yours sincerely,



Fereshta Hedjran  
Assisted Compliance Section  
Compliance Division  
Charities Directorate  
Canada Revenue Agency  
Suite 1306  
Tower A, Place de Ville  
320 Queen Street  
Ottawa ON K1A 0L5

#8272 88911 R20001

**A E WEST CHARITABLE FOUNDATION**

20, 27019 Township Road 514  
Spruce Grove, Alberta T7Y 1G6

November 24, 2021

RECEIVED/REÇU

Fereshta Hedjran  
Assistant Compliance Section  
Charities Directorate, Canada Revenue Agency  
Suit 1306, Tower A, Place de Ville  
320 Queen Street  
Ottawa ON K1A 0L5

CISD

Dear Fereshta Hedjran:

Further to your letter dated October 7, 2021 (copy attached) and your verbal agreement to extend our response letter to November 26, 2021, my comments and attachments follow.

I have re-reviewed the Foundation's T3010 – Registered Charity Information Returns for the audit period from January 1, 2012 to December 31, 2016, the calculations of the Distribution Quota ("DQ") from January 1, 2012 to December 31, 2016, your previous letters dated August 22, 2018 and December 17, 2018 and our respective response letters dated October 15, 2018 and January 15, 2019.

I have also re-reviewed the Foundation's T3010 – Registered Charity Information Returns and the calculations of the DQ for the post-audit fiscal period from January 1, 2017 to December 31, 2020.

I will deal with each of the areas of non-compliance in turn using the same headings as set out in your letter dated October 7, 2021.

**1. Failure to meet disbursement quota (devotion of resources to charitable purposes)**

After my re-review of the Foundation's Registered Charity Information Returns and the calculations of the DQ for the audit period from January 1, 2012 to December 31, 2016, there are two (2) financial adjustments that are required:

**ADJUSTMENT #1 – The value of the Assets for December 31, 2013 should be \$83,339 and not \$138,339 (\$138,339 - \$55,000 = \$83,339)**

- The value of the Assets included in the Line 5900 calculation for December 31, 2013 should be "**net assets**" of \$83,339 (\$138,339 - \$55,000 (investment loan) = \$83,339) and not the "**gross assets**" of 138,339.
- In your letter dated October 7, 2021 you referred to the fact that this \$55,000 loan was used to purchase assets - "*Similarly, on June 18, 2013, the Organization received a donation of \$40,000, and a loan in the amount of \$55,000; both from [REDACTED] These funds were then used, on the same day, to acquire marketable securities (shares in [REDACTED] and [REDACTED]) from [REDACTED] in the amount of \$95,000.*"

**ADJUSTMENT #2 – Line 5900 and Line 5910 were incorrect**

- The original numbers for Line 5900 and Line 5910 for December 31, 2015 were incorrect. The correct numbers based on the Foundation's balance sheets for Line 5900 and Line 5910 are \$110,596 and \$71,363 respectively.



The significance of these two (2) adjustments to the DQ calculations for the audit period is the Foundation had, in fact, a small excess DQ of \$1,166 and not a small DQ shortage of \$2,421 ( $\$759 + \$1,662 = \$2,421$ ).

I have re-calculated your schedules on page 3 (2 pages) and 7 (2 pages) of your letter dated October 7, 2021 based on these two (2) adjustments so it is easier to audit (copy attached).

I have also reviewed the post-audit T3010 – Registered Charity Information Returns and the calculations of the DQ for period from January 1, 2017 to December 31, 2020. There are also additional excess DQ payments of \$1,500 during this post audit period.

In summary, the Foundation did not have any DQ shortages at any time but, in fact, the Foundation had a total DQ excess during the audit period and the post-audit period totaling \$2,666 ( $\$1,166 + \$1,500 = \$2,666$ ) (copy attached).

## **2. Failure to devote resources to charitable purposes**

I am now [REDACTED] who has carried on successful businesses for over [REDACTED]. During this time, I have had to make numerous business/investment decisions the majority of which were successful. A few, of course, were not successful but that is the nature of carrying on a business or making an investment decision. Hindsight is always 20/20. There are no do-overs.

Unfortunately, in 2015 the Foundation had to write down the value of 125,000 Class "A" shares of [REDACTED] of \$75,000 to \$1 and the value of the 4 units of [REDACTED] of \$20,000 to \$1. Both of these investments were directly involved in the oil and gas industry. In addition, the value of [REDACTED] of \$42,500 were

written down to \$21,250. [REDACTED] were indirectly involved in the oil and gas industry and suffered because of the overall impact on the Alberta economy.

The massive drops in value for these three (3) investments were unexpected and due to outside forces, namely, an unprecedented downturn for the oil and gas industries worldwide.

Since I am a Director of the Foundation, I am at non-arm's relationship with the Foundation. I am however familiar with Section 69 of the Income Tax Act that requires that all non-arm's length parties must deal at fair market value. Although I am dealing at non-arm's length with the Foundation, all three (3) of the investments, [REDACTED] and [REDACTED] were independent and third-party investments. [REDACTED] and [REDACTED] Partnership are public companies.

Your comments about the lack of internal controls for the Foundation do not apply in this case since the Foundation is very small with only three (3) Directors/Members, all of whom are family members. The Foundation also does not have an office and has no employees. The Foundation's accounting requirements were minimal with only two (2) or three (3) journal entries per year. Consequently, I believe your comments about internal controls do not apply in this case although they would apply to large organizations.

In summary, the Foundation did do its very best to devote its resources to charitable activities during the period under audit.

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

From the Foundation's incorporation by Letters Patent on February 11, 2011 to December 31, 2013, the Foundation retained the professional accounting firm of [REDACTED] Chartered Accountants, to prepare the Foundation's Financial Statements and T3010 – Registered Charity Information Returns and to prepare the DQ calculations. It was during these early years, as you noted, that the majority of the Foundation's financial transactions occurred. Consequently, the Foundation's books and records were professionally prepared and maintained. In the subsequent years, the Foundation's accounting requirements were minimal with only two (2) or three (3) entries per year so that it was much easier to maintain the books and records.

As stated previously, I was familiar with Section 69 of the Income Tax Act; consequently, I ensured that the Foundation purchased its three (3) investments at fair market value and that these purchases were supported by the appropriate comprehensive legal documentation. All of this legal documentation was provided to you in the Foundation's response letter dated October 15, 2018.

On page 10 of your letter, you stated *"In addition, the books and records did not include a copy of a written loan agreement between [REDACTED] and the Organization, outlining terms and conditions of the non-arm's length liability totaling \$55,000, that the Organization reported in its fiscal period ended December 31, 2013."* In fact, a copy of a written legal agreement between myself and the Foundation of \$55,000 on December 31, 2013 was neither needed nor required. This \$55,000 was properly reported in the books and records and documented by two (2) bank drafts totaling \$55,000 on December 31, 2013 (copies attached). On January 1, 2014, the next day, this \$55,000 that was owed to myself, a non-arm's length party (Line 4320), was paid off in full when it was converted to a charitable donation dated January 1, 2014. This is proper and correct.

Regarding your comments about consulting fees and T4As, since this whole area of consulting fees versus employee is very complex and since the Foundation pays very little consulting fees, in the future the Foundation will just issue T4As.

In summary, the Foundation did maintain adequate documentary evidence to support the asset amounts reported in its Form T3010s under the periods under audit, and provided adequate books and records as required.

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

Donation Receipt #4 dated January 1, 2014 issued to [REDACTED] for \$55,000 was proper and correct.

As discussed previously, the \$55,000 was properly disclosed on the Foundation's T3010 – Registered Charity Information Return for December 31, 2013, Line 4320 – Amount owing to a non-arm's length party. This \$55,000 was verified and supported in the Foundation's books and records by two (2) bank drafts totaling \$55,000.

In summary, the Foundation has properly and correctly issued donation receipts in accordance with the Act and/or its Regulations.

**5. Failure to comply with the requirements of the Act for its continued registration**

We agree that the Foundation should be re-designated from a "public" Foundation to a "private" Foundation. In fact, on June 1, 2015, the Foundation filed T2095 – Registered Charities Application for Re-

Designation to become a "*private*" Foundation. On July 10, 2015, the Foundation received the CRA acknowledgement letter. On May 09, 2016, the Foundation received the CRA Notice of Re-Designation effective January 1, 2017 confirming that the Foundation was now a "*private*" Foundation.

In summary, the Foundation was re-designated from a "*public*" Foundation to a "*private*" Foundation effective January 1, 2017 and therefore complied with the requirements of the Act for its continued registration.

#### **OVERALL CONCLUSION**

We believe that the Foundation has satisfied all five (5) areas of non-compliance as set out in your letter dated October 7, 2021.

Yours truly,



Evan West

Director

A E West Charitable Foundation

20, 27019 Township Road 514

Spruce Grove, AB T7Y 1G6

**A E WEST CHARITABLE FOUNDATION**  
**LIST OF ATTACHMENTS**  
**24-Nov-21**

		<b>Number of Pages #</b>
1	A copy of the CRA letter dated October 7, 2021	16
2	<u>T1240 - Registered Charity Adjustment Requests</u>	
	* December 31, 2013	2
	* December 31, 2014	2
	* December 31, 2015	2
	* December 31, 2016	2
3	<u>Analysis of DQ Due versus DQ Paid - audit period of 2012 to 2016 (Excess DQ paid of \$1,166) and post audit period of 2017 to 2020 (Excess DQ paid of \$1,500) for Total Excess DQ Paid of \$2,666</u>	1
4	<u>Recalculated DQ due and DQ paid based on the T1240 - Registered Charity Adjustment Requests</u>	
	* Page 3 of the CRA letter dated October 7, 2021	2
	* Page 7 of the CRA letter dated October 7, 2021	2
5	<u>Documentation for the \$55,000 (Line 4320) on the T3010 for December 31, 2013 and the Charitable Donation of \$55,000 on January 1, 2014</u>	
	* Bank draft #1 for \$35,000	1
	* Bank draft #2 for \$20,000	1

6 Re-Designation Documents

\* T2095 - Registered Charities Application for

Re-Designation dated June 1, 2015

1

\* CRA Acknowledgement letter dated July 10, 2015

1

\* CRA Notice of Re-Designation dated May 9, 2016  
effective January 1, 2016

2

TOTAL

35



## Registered Charity Adjustment Request

- Use this form if you are a director, trustee, like official, or authorized representative requesting changes to the information filed on Form T3010, Registered Charity Information Return. You can also use Section B to change the charity's mailing address.
- For information on how to make other changes such as the charity's legal name, designation, telephone number, or activities, go to [canada.ca/charities-giving](http://canada.ca/charities-giving), select Operating a registered charity, and see Making changes, or call Client Service at 1-800-267-2384.
- Information collected on this form is available to the public, except where it is identified as confidential.
- See the back of this form for instructions on how to complete it. Incorrect or incomplete information may result in processing delays.

### Section A – Identification of the organization

Legal name of charity  
**A E WEST CHARITABLE FOUNDATION**

BN/registration number  
8 2 7 2 8 8 9 1 1 R R 0 0 1

### Section B – Change of mailing address

New mailing address (street number, name, city, province or territory, and postal code)

Effective date of new address  
Year Month Day

### Section C – Form T3010 adjustment details

- 1) Enter the fiscal period-end for adjustment 

Year	Month	Day
2	0	1

3	1	2
3	1	

 (Use a separate form for each fiscal period that requires an adjustment.)
- 2) In the table below, list each line of the charity's Form T3010 that you want to change. If a change affects the total amount reported on a different line of Form T3010, you must also list the affected line, its original amount, and the corrected amount. See the back of this form for examples.

Column 1 Line numbers on Form T3010	Column 2 Original information or amount reported on Form T3010	Column 3 Revised information or amount
5910	90,847	63,346

Other details or explanations (if you need more space, attach a separate sheet using the same format)  
**SEPARATE SHEET ATTACHED**

### Section D – Certification (confidential information)



**A E WEST CHARITABLE FOUNDATION**  
**OTHER DETAILS OR EXPLANATIONS**  
**31-Dec-13**

Column 1 Original Line on T3010	Column 2 Original T3010 \$	Column 3 Revised T3010 \$
5910	90,847	63,346

**CALCULATION OF COLUMN 3 - \$63,347**

**[5910]**

	\$	\$
31-Dec-12		43,354
31-Dec-13		
* Gross Assets	138,339	
Less: Investment		
Loan	<u>-55,000</u>	
* Net Assets	<u>83,339</u>	<u>83,339</u>
Total revised Net Assets		<u>126,693</u>
<b><u>REVISED AVERAGE</u></b>		
<b>[\$126,693/2 = \$63,346]</b>		<u>63,346</u>

**Registered Charity Adjustment Request**

- Use this form if you are a director, trustee, like official, or authorized representative requesting changes to the information filed on Form T3010, Registered Charity Information Return. You can also use Section B to change the charity's mailing address.
- For information on how to make other changes such as the charity's legal name, designation, telephone number, or activities, go to [canada.ca/charities-giving](http://canada.ca/charities-giving), select Operating a registered charity, and see Making changes, or call Client Service at 1-800-267-2384.
- Information collected on this form is available to the public, except where it is identified as confidential.
- See the back of this form for instructions on how to complete it. Incorrect or incomplete information may result in processing delays.

**Section A – Identification of the organization**

Legal name of charity

A E WEST CHARITABLE FOUNDATION

BN/registration number

8 2 7 2 8 8 9 1 1 R R 0 0 1

**Section B – Change of mailing address**

New mailing address (street number, name, city, province or territory, and postal code)

Effective date of new address

Year Month Day

**Section C – Form T3010 adjustment details**

Year Month Day

1) Enter the fiscal period-end for adjustment 2 0 1 4 1 2 3 1 (Use a separate form for each fiscal period that requires an adjustment.)

2) In the table below, list each line of the charity's Form T3010 that you want to change. If a change affects the total amount reported on a different line of Form T3010, you must also list the affected line, its original amount, and the corrected amount. See the back of this form for examples.

Column 1 Line numbers on Form T3010	Column 2 Original information or amount reported on Form T3010	Column 3 Revised information or amount
5900	90,847	63,348
5910	138,097	110,596

Other details or explanations (if you need more space, attach a separate sheet using the same format)

SEPARATE SHEET ATTACHED

**Section D – Certification (confidential information)**

**A E WEST CHARITABLE FOUNDATION  
OTHER DETAILS OR EXPLANATIONS  
31-Dec-14**

<b>Column 1 Original Line on T3010</b>	<b>Column 2 Original T3010 \$</b>	<b>Column 3 Revised T3010 \$</b>
5900	90,847	63,346
5910	138,097	110,596

**CALCULATION OF COLUMN 3 - \$110,596 [5910]**

31-Dec-13 (Revised)	83,339
(\$138,339 - \$55,000 = \$83,339)	

31-Dec-14	<u>137,854</u>
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Total revised Net Assets	<u>221,193</u>
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<u>REVISED AVERAGE</u>	
(\$221,193/2 = \$110,596)	<u>110,596</u>



## Registered Charity Adjustment Request

- Use this form if you are a director, trustee, like official, or authorized representative requesting changes to the information filed on Form T3010, Registered Charity Information Return. You can also use Section B to change the charity's mailing address.
- For information on how to make other changes such as the charity's legal name, designation, telephone number, or activities, go to [canada.ca/charities-giving](http://canada.ca/charities-giving), select Operating a registered charity, and see Making changes, or call Client Service at 1-800-267-2384.
- Information collected on this form is available to the public, except where it is identified as confidential.
- See the back of this form for instructions on how to complete it. Incorrect or incomplete information may result in processing delays.

### Section A – Identification of the organization

Legal name of charity  
**A E WEST CHARITABLE FOUNDATION**

BN/registration number  
**8 2 7 2 8 8 9 1 1 R R 0 0 1**

### Section B – Change of mailing address

New mailing address (street number, name, city, province or territory, and postal code)

Effective date of new address  
Year Month Day

### Section C – Form T3010 adjustment details

- 1) Enter the fiscal period-end for adjustment **2 0 1 5 1 2 3 1** (Use a separate form for each fiscal period that requires an adjustment.)
- 2) In the table below, list each line of the charity's Form T3010 that you want to change. If a change affects the total amount reported on a different line of Form T3010, you must also list the affected line, its original amount, and the corrected amount. See the back of this form for examples.

Column 1 Line numbers on Form T3010	Column 2 Original information or amount reported on Form T3010	Column 3 Revised information or amount
5900	138,339	110,596
5910	137,854	90,363

Other details or explanations (if you need more space, attach a separate sheet using the same format)  
**SEPARATE SHEET ATTACHED**

### Section D – Certification (confidential information)

**A E WEST CHARITABLE FOUNDATION  
OTHER DETAILS OR EXPLANATIONS  
31-Dec-15**

<b>Column 1 Original Line on T3010</b>	<b>Column 2 Original T3010 \$</b>	<b>Column 3 Revised T3010 \$</b>
5900	138,339	110,596
5910	137,854	90,363

**CALCULATION OF COLUMN 3 - \$90,363 [5910]**

	\$	\$
31-Dec-14		137,854

31-Dec-15		<u>42,873</u>
-----------	--	---------------

Total revised Net Assets		<u>180,727</u>
--------------------------	--	----------------

<b><u>REVISED AVERAGE</u></b> <b>(\$180,727/2 = \$90,363)</b>		<u>90,363</u>
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## Registered Charity Adjustment Request

- Use this form if you are a director, trustee, like official, or authorized representative requesting changes to the information filed on Form T3010, Registered Charity Information Return. You can also use Section B to change the charity's mailing address.
- For information on how to make other changes such as the charity's legal name, designation, telephone number, or activities, go to [canada.ca/charities-giving](http://canada.ca/charities-giving), select Operating a registered charity, and see Making changes, or call Client Service at 1-800-267-2384.
- Information collected on this form is available to the public, except where it is identified as confidential.
- See the back of this form for instructions on how to complete it. Incorrect or incomplete information may result in processing delays.

### Section A – Identification of the organization

Legal name of charity  
**A E WEST CHARITABLE FOUNDATION**

BN/registration number  
**8 2 7 2 8 8 9 1 1 R R 0 0 1**

### Section B – Change of mailing address

New mailing address (street number, name, city, province or territory, and postal code)

Effective date of new address

Year    Month    Day

### Section C – Form T3010 adjustment details

- 1) Enter the fiscal period-end for adjustment    Year    Month    Day  
**2 0 1 6 1 2 3 1** (Use a separate form for each fiscal period that requires an adjustment.)
- 2) In the table below, list each line of the charity's Form T3010 that you want to change. If a change affects the total amount reported on a different line of Form T3010, you must also list the affected line, its original amount, and the corrected amount. See the back of this form for examples.

Column 1 Line numbers on Form T3010	Column 2 Original information or amount reported on Form T3010	Column 3 Revised information or amount
5900	0	90,363
5910	0	33,827

Other details or explanations (if you need more space, attach a separate sheet using the same format)  
**SEPARATE SHEET ATTACHED**

### Section D – Certification (confidential information)

**A E WEST CHARITABLE FOUNDATION  
OTHER DETAILS OR EXPLANATIONS  
31-Dec-16**

<b>Column 1 Original Line on T3010</b>	<b>Column 2 Original T3010 \$</b>	<b>Column 3 Revised T3010 \$</b>
5900	0	90,363
5910	0	33,827

**CALCULATION OF COLUMN 3 - \$33,827**    **[5910]**

	<b>\$</b>	<b>\$</b>
31-Dec-15		42,873

31-Dec-16		<u>24,781</u>
-----------	--	---------------

Total revised Net Assets		<u>67,654</u>
--------------------------	--	---------------

<b><u>REVISED AVERAGE</u></b> <b>(\$67,654/2 = \$33,827)</b>		<u>33,827</u>
---	--	---------------

**A E WEST CHARITABLE FOUNDATION  
ANALYSIS OF DQ DUE VERSUS DQ PAID  
24-Nov-21**

		<b>5900</b>	<b>DQ</b>	<b>DQ</b>	<b>Excess</b>
		<b>\$</b>	<b>Due</b>	<b>Paid</b>	<b>DQ Paid</b>
			<b>\$</b>	<b>\$</b>	<b>\$</b>
	<b><u>AUDIT PERIOD</u></b>				
2012		0	0	1,400	
2013	T1240	21,677	759	0	
2014	T1240	63,346	2,217	1,780	
2015	T1240	110,596	3,871	4,833	
2016	T1240	<u>90,363</u>	<u>3,163</u>	<u>3,163</u>	
		<u>285,982</u>	<u>10,010</u>	<u>11,176</u>	1,166

	<b><u>POST AUDIT PERIOD</u></b>				
2017		33,827	1,184	1,184	
2018		23,724	0	900	
2019		22,522	0	300	
2020		<u>21,950</u>	<u>0</u>	<u>300</u>	
		<u>102,023</u>	<u>1,184</u>	<u>2,684</u>	<u>1,500</u>

<b>Total Excess DQ Paid</b>					<u>2,666</u>
-----------------------------	--	--	--	--	--------------



The Organization has demonstrated a lack of adequate segregation of duties and internal controls in relation to the applicable non-arm's length transactions. It is not an acceptable segregation of duties for [REDACTED] - a member of the Organization's board - to accept donations from [REDACTED] and then use the funds acquired through those donations to purchase shares and other investment assets, on behalf of the Organization, from himself via trust agreements signed by himself.

Further, following the acquisition of the investment assets from [REDACTED] the Organization recorded investment loss expenses and reduced the book value of its investment assets during its fiscal periods ending December 31, 2015, and December 31, 2016. The value of the marketable securities were reduced from \$95,000, as of June 18, 2013, the date of purchase, to \$2, as of June 30, 2015 (per "asset review and directors meeting" minutes dated December 7, 2015), and the investment in property was reduced from \$42,500, as of January 17, 2012, to \$21,250 as of December 15, 2017 (per "asset review and directors meeting" minutes dated December 7, 2017).

The documentation provided (consisting of the single page meeting minutes applicable to 2015 and 2017) confirmed the Organization effectively reduced the value of each of its marketable securities to the nominal value based solely on speculation unsupported by independent, substantiating documentation. The reduction of the real estate investment property to 50% of its originally stated value (\$21,250) was also unsupported.

The Organization failed to provide information or demonstrate internal considerations concerning the intended duration of its investments and the rate of return expected. No information has been shared with, or obtained by, the CRA that indicates how the decision to invest the Organization's funds was reached, including whether the decision was reached in fiscally prudent manner. The Organization provided no meeting minutes, investment policy or other secondary documentation to demonstrate consideration of defined investment criteria, whether a review of the financial integrity of the company in which it invested its resources was conducted, or whether the investments were in fact being actively monitored on a regular basis to take into account potential losses or gains of charitable resources. The Organization failed to adequately demonstrate a prudent and sound evaluation process supported by independent documentation in determining the value of the assets to be written-down.

Additionally, the scope of the Organization's financial activities during the audit period indicate it operated primarily in furtherance of a collateral, non-charitable purpose, namely the unrelated business activity of conducting investment transactions. The contrast of resources devoted to its investments versus the resources devoted to its charitable purposes are summarized as follows:

<u>Fiscal period ending</u>	<u>Total investment asset acquisition</u>	<u>Total charitable spending (gifts to qualified donees)</u>	<u>Minimum DQ required</u>
2012-12-31	42,500	1,400	0
2013-12-31	95,500	0	759
2014-12-31	0	1,780	3,180
2015-12-31	0	4,833	4,833
2016-12-31	0	3,163	3,163
	137,500	11,176	11,935
			10,010

Excess D & Paid  
(11,176 - 10,010 = 1,166)

A E WEST CHARITABLE FOUNDATION  
ANALYSIS OF DQ DUE VERSUS DQ PAID  
24-Nov-21

② 102

		5900	DQ	DQ	Excess
		\$	Due	Paid	DQ Paid
			\$	\$	\$
<b><u>AUDIT PERIOD</u></b>					
2012		0	0	1,400	
2013	T1240	21,677	759	0	
2014	T1240	63,346	2,217	1,780	
2015	T1240	110,596	3,871	4,833	
2016	T1240	<u>90,363</u>	<u>3,163</u>	<u>3,163</u>	
		<u>285,982</u>	<u>10,010</u>	<u>11,176</u>	1,166
<b><u>POST AUDIT PERIOD</u></b>					
2017		33,827	1,184	1,184	
2018		23,724	0	900	
2019		22,522	0	300	
2020		<u>21,950</u>	<u>0</u>	<u>300</u>	
		<u>102,023</u>	<u>1,184</u>	<u>2,684</u>	<u>1,500</u>
Total Excess DQ Paid					<u>2,666</u>

The Organization has demonstrated a lack of adequate segregation of duties and internal controls in relation to the applicable non-arm's length transactions. It is not an acceptable segregation of duties for [REDACTED] - a member of the Organization's board - to accept donations from [REDACTED] and then use the funds acquired through those donations to purchase shares and other investment assets, on behalf of the Organization, from himself via trust agreements signed by himself.

Further, following the acquisition of the investment assets from [REDACTED] the Organization recorded investment loss expenses and reduced the book value of its investment assets during its fiscal periods ending December 31, 2015, and December 31, 2016. The value of the marketable securities were reduced from \$95,000, as of June 18, 2012, the date of purchase, to \$2, as of June 30, 2015 (per "asset review and directors meeting" minutes dated December 7, 2015), and the investment in property was reduced from \$42,500, as of January 17, 2012, to \$21,250 as of December 15, 2017 (per "asset review and directors meeting" minutes dated December 7, 2017).

The documentation provided (consisting of the single page meeting minutes applicable to 2015 and 2017) confirmed the Organization effectively reduced the value of each of its marketable securities to the nominal value based solely on speculation unsupported by independent, substantiating documentation. The reduction of the real estate investment property to 50% of its originally stated value (\$21,250) was also unsupported.

The Organization failed to provide information or demonstrate internal considerations concerning the intended duration of its investments and the rate of return expected. No information has been shared with, or obtained by, the CRA that indicates how the decision to invest the Organization's funds was reached, including whether the decision was reached in a fiscally prudent manner. The Organization provided no meeting minutes, investment policy or other secondary documentation to demonstrate consideration of defined investment criteria, whether a review of the financial integrity of the company in which it invested its resources was conducted, or whether the investments were in fact being actively monitored on a regular basis to take into account potential losses or gains of charitable resources. The Organization failed to adequately demonstrate a prudent and sound evaluation process supported by independent documentation in determining the value of the assets to be written-down.

Additionally, the scope of the Organization's financial activities during the audit period indicate it operated primarily in furtherance of a collateral, non-charitable purpose, namely the unrelated business activity of conducting investment transactions. The contrast of resources devoted to its investments versus the resources devoted to its charitable purposes are summarized as follows:

<u>Fiscal period ending</u>	<u>Total investment asset acquisition</u>	<u>Total charitable spending (gifts to qualified donees)</u>	<u>Minimum DQ required</u>
2012-12-31	42,500	1,400	0
2013-12-31	95,500	0	759
2014-12-31	0	1,780	3,180
2015-12-31	0	4,833	4,833
2016-12-31	0	3,163	3,163
	<u>137,500</u>	<u>11,176</u>	<u>1,935</u>

0	0
759	759
3,180	2,217
4,833	3,871
3,163	3,163
1,935	3,163
	<u>10,010</u>

T1240s  
Filed

Excess D & Paid  
(11,176 - 10,010 = 1,166)

A E WEST CHARITABLE FOUNDATION  
ANALYSIS OF DQ DUE VERSUS DQ PAID  
24-Nov-21

(2) 102

		5900	DQ Due	DQ Paid	Excess DQ Paid
		\$	\$	\$	\$
<b><u>AUDIT PERIOD</u></b>					
2012		0	0	1,400	
2013	T1240	21,677	759	0	
2014	T1240	63,346	2,217	1,780	
2015	T1240	110,596	3,871	4,833	
2016	T1240	<u>90,363</u>	<u>3,163</u>	<u>3,163</u>	
		<u>285,982</u>	<u>10,010</u>	<u>11,176</u>	1,166
<b><u>POST AUDIT PERIOD</u></b>					
2017		33,827	1,184	1,184	
2018		23,724	0	900	
2019		22,522	0	300	
2020		<u>21,950</u>	<u>0</u>	<u>300</u>	
		<u>102,023</u>	<u>1,184</u>	<u>2,684</u>	<u>1,500</u>
Total Excess DQ Paid					<u>2,666</u>

TRANSACTION CONFIRMATION

DEPOSIT

Credit Account: 18Jun2013  
Clearing CHQ: CAD35,000.00 Available: 18Jun2013  
Number Of Cheques: 1 Value:  
Credit Amount: CAD35,000.00  
Credit Narrative: LOAN TO AE WEST CHARFFY CHQ#

#42

Attachment ⑤

TRANSACTION CONFIRMATION

DEPOSIT

18Jun2013 Br:

Credit Account:

Clearing CHQ: CAD20,000.00 Available: 18Jun2013 Value:

Number Of Cheques 1

Credit Amount: CAD20,000.00

Credit Narrative: LOAN TO AE WEST CHARITY - CHEQUE #

#2a



Attachment ⑥



Canada Revenue  
Agency

Agence du revenu  
du Canada

Protected B when completed

## REGISTERED CHARITIES APPLICATION FOR RE-DESIGNATION

All documents relating to Application for Re-Designation are available to the public upon request.

The designation of a charity depends on its board structure, sources of funding, and its mode of operation.

There are three types of designations for registered charities:

- i) Charitable organization
- ii) Public foundation
- iii) Private foundation

Assistance: Charities Directorate – 1-800-267-2384

Mail the fully completed application to:

Charities Directorate  
Canada Revenue Agency  
Ottawa ON K1A 0L5

### Applicant

Charity name

**A E WEST CHARITABLE FOUNDATION**

Charity registration number

**82728 8911 RR0001**

### Particulars

The charity would like to be designated as:

☐

Charitable organization

☒

Private foundation

☐

Public foundation

Provide detailed information about why the new designation is appropriate

All the Directors and Members of the Foundation are now family members. Consequently, we would like the Foundation to be re-designated from a Public Foundation to a Private Foundation.

### Certification

I hereby apply for re-designation of the above-named charity. I certify that the information given on this form and in any attachment is, to the best of my knowledge, correct, complete, and current.

Name of person authorized to sign on behalf of the charity (Print)

**Andria D. West**

Contact phone

Ext

Signature

Date

*June 1, 2015*

Visit our web site - Charities and Giving - [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)

T2095-E (11)

Form authorized by the Minister of National Revenue  
Ce formulaire existe en "français"

Canada

Ms. Andria D. West  
Authorized Representative  
A E West Charitable Foundation  
20 - 27019 Township Road 514  
Spruce Grove AB T7Y 1G6

*Our file number*  
3045813

July 10, 2015

Dear Ms. West:

**Subject: Acknowledgement**

We acknowledge receipt of your letter sent to the Charities Directorate which we received June 16, 2015.

For reference purposes, your correspondence (case number #239052) will be assigned to an Officer as soon as possible.

To learn more about guidelines and policies for registered charities, please do not hesitate to contact the Client Service Section at the toll free number 1-800-267-2384 or visit our website at [www.cra.gc.ca/charitiesandgiving](http://www.cra.gc.ca/charitiesandgiving).

Sincerely,

Client Service Section Team  
Charities Directorate

Canada





Canada Revenue Agency  
Agence du revenu  
du Canada

Ms. Andria D. West  
Director  
A E West Charitable Foundation  
20 - 27019 Township Road 514  
Spruce Grove AB T7Y 1G6

Your file

Our file  
3045813

MAY 09 2016

Dear Ms. West:

#### NOTICE OF RE-DESIGNATION

Reference is made to the Form T2095, *Registered Charities: Application for Re-Designation*, dated June 1, 2015 as provided for under subsection 149.1(6.3) of the *Income Tax Act*.

Based on the information provided, A E West Charitable Foundation (the Organization) meets the definition of a *private foundation* as defined in section 149.1 of the Act and is re-designated as such effective January 1, 2017 until it is otherwise designated or its registration is revoked.

We draw your attention to the enclosed documents, which describe the different designation categories and the consequences flowing from a particular designation.

This letter should be kept as part of the Organization's permanent records since it serves as the Canada Revenue Agency's official notification of re-designation of the Organization.

Please do not hesitate to call us at 1-800-267-2384 if you wish to discuss this matter further. You can also write to us at Client Service Section, Charities Directorate, Canada Revenue Agency, Ottawa ON K1A 0L5.

To receive updates when new information is added to the Charities and giving webpages, go to [www.cra.gc.ca/lists](http://www.cra.gc.ca/lists) and subscribe to the "Charities and giving - What's new" electronic mailing list.

In order to receive the latest notices from the Charities Directorate such as the email reminder to file Form T3010, *Registered Charity Information Return*, please provide us with a valid email address at your earliest convenience.

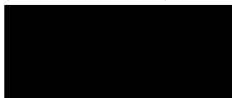
Canada

R350 E (04)

- 2 -

For more information about registered charities and their obligations under the Act, go to [www.cra.gc.ca/charitiesandgiving](http://www.cra.gc.ca/charitiesandgiving).

Yours sincerely,



Stasia Gaffney  
Program Analyst  
for Cathy Hawara  
Director General  
Charities Directorate.

Enclosures

## APPENDIX A

### A E West Charitable Foundation

#### Audit of A E West Charitable Foundation (the Organization) for the periods from January 1, 2012 to December 31, 2016

#### Comments on the Organization's Representations of November 24, 2021

The audit conducted by the Canada Revenue Agency (CRA) identified that the Organization:

1. Failed to meet disbursement quota (devotion of resources to charitable purposes)
2. Failed to devote resources to a charitable purpose
3. Failed to maintain adequate books and records
4. Issued receipts not in accordance with the Act and/or its Regulations
5. Failed to comply with the requirements of the Act for its continued registration

We have reviewed the Organization's submission dated November 24, 2021, and we maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the Income Tax Act. The Organization has failed to provide additional documentation or reasonable explanations to address many of the areas of non-compliance identified during the audit. As such, it remains our opinion that the Organization's registration as a charity should be revoked.

Below please find:

- i. A summary of the issues raised by the CRA in our letter of October 7, 2021;
- ii. A summary of responses provided by the Organization in its November 24, 2021, representation; and
- iii. The CRA's conclusion with respect to each issue.

#### 1. Failure to meet disbursement quota (devotion of resources to charitable purposes)

The disbursement quota is the minimum amount that a registered charity must spend each year on its own charitable activities or on gifts to qualified donees. The disbursement quota calculation is based on the value of a charity's property not used in furtherance of charitable activities or for management and administration. It is our position that the Organization failed to meet its disbursement quota.

#### The Organization's response:

The Organization stated that it reviewed its Form T3010, Registered Charity Information Returns, and calculations of the disbursement quota for the periods from January 1, 2012 to December 31, 2016, and that two financial adjustments were applicable:

- The value of the assets not used in charitable activities in the fiscal period ending

December 31, 2013 should be \$83,339 and not \$138,339. The Organization's representations stated that an investment loan in the amount of \$55,000 should be deducted from the amount originally reported on line 4130, Investments in non-arm's length persons, resulting in an amended total of \$83,339 applicable to line 4200, Total assets; and

- The amounts originally reported on lines 5900 (\$138,339) and 5910 (\$137,854) in the fiscal period ending December 31, 2015 were incorrect. The amounts should be amended to \$110,596 and \$90,363 respectively.

The Organization stated that it recalculated the disbursement quota based on the two adjustments, resulting in an excess of \$1,166 for the fiscal periods ending December 31, 2012 through December 31, 2016, and that the disbursement quota should be \$1,500 (excess) for the periods from January 1, 2017 to December 31, 2020.

The Organization submitted copies of Form T1240, Registered Charity Adjustment Request, requesting adjustments to lines 5900 and 5910 for the fiscal periods ending December 31, 2013 through December 31, 2016, to amend applicable calculated disbursement quota amounts.

The CRA's conclusion:

With respect to the Organization's calculations and adjustments regarding lines 4200, 5900, and 5910 of its Form T3010s, it is our position that the total asset amount for the fiscal period ending December 31, 2013, remains \$138,339, as it must include applicable investment assets acquired in the amount of \$55,000 (representing marketable securities with [REDACTED]).

A donation amount of \$40,000 and a loan amount of \$55,000, both received from non-arm's length representative [REDACTED], were received and used by the Organization in the 2013 fiscal period, to acquire the investment assets. As a result, amendments to the amounts reported on line 5900 and 5910 are not applicable.

In addition, the Organization concluded that it did not have any disbursement quota shortages, however, it provided disbursement quota calculations which included ineligible excess amounts from the fiscal periods 2017 through 2020.

The Organization failed to alleviate the concerns presented in our letter of October 7, 2021, with respect to its failure to meet its disbursement quota. It remains our position that the Organization failed to comply with the requirements outlined in subsection 149.1(1) of the Act, and as a result, we hereby intend to revoke the registration of the Organization under paragraphs 149.1(3)(b) and 168(1)(b) of the Act.

## **2. Failure to devote resources to a charitable purpose**

It is our position that the Organization failed to fulfil its fiduciary duties as a trustee of public funds in that it placed its charitable resources at undue risk, and failed to devote its resources to exclusively charitable activities in furtherance of its charitable purposes.

### The Organization's response:

The Organization stated that it chose to write-down the value of the 125,000 Class "A" shares of [REDACTED] of \$75,000 to \$1 and the value of the 4 units of [REDACTED] of \$20,000 to \$1, as these investments held were impacted by the applicable industry (oil and gas). As well, the Organization chose to write-down the value of the property of [REDACTED] of \$42,500 by 50% to \$21,250, again as the investment held was impacted by the applicable industry (oil and gas). The Organization stated that the significant drops in value for these investments were unexpected and due to outside forces, namely an unprecedented downturn for the oil and gas industry worldwide.

In addition, the Organization stated that it acknowledges that [REDACTED] maintains a non-arms relationship with it as a member of its board of directors, and that [REDACTED] is familiar with the requirements of section 69 of the Act (inadequate considerations in non-arm's length transactions). The Organization stated that although [REDACTED] is dealing at non-arm's length with the Organization, all three of the investments were independent, third-party investments, and that [REDACTED] and [REDACTED] are public companies.

Further, the Organization stated that our comments about the lack of internal controls for the Organization do not apply in this case since the Organization is very small with only three directors/members, all of whom are family members. The Organization added that it does not have an office or employees, and that its accounting requirements were minimal with only two or three journal entries per year. The Organization believes that our comments about internal controls do not apply in its case (but would apply to large organizations).

The Organization concluded that it did its best to devote its resources to charitable activities during the fiscal periods under audit.

### The CRA's conclusion:

During the fiscal periods under audit the Organization did not engage in any charitable activities, and instead devoted all of its resources to its investments, which represents the pursuit of a collateral non-charitable purpose. Further, the Organization failed to demonstrate that it has been diligent in managing and safeguarding its resources.

The directors of the Organization failed to demonstrate fulfillment of fiduciary responsibilities to ensure the Organization was operated in the public interest, and managed for the benefit of the

public. As stated above, the Organization failed to conduct any charitable activities during the fiscal periods under audit and therefore failed to operate exclusively for charitable purposes. The Organization failed to adequately demonstrate how the decision to invest its resources was reached, including whether the decision was reached in a fiscally prudent manner. The Organization failed to provide an investment policy to demonstrate the consideration of investment criteria, and failed to provide documentation to demonstrate the investments were actively monitored on a regular basis to take into account potential losses or gains of charitable resources.

Internal controls are necessary for charities of every size to ensure their resources are appropriately managed. The directors of a registered charitable organization are responsible for establishing and maintaining an adequate internal control structure that minimizes the risks associated with any misstatement in the financial reporting of the organization, safeguards the organization's assets, and prevents or detects errors and/or fraud. Directors of a charitable organization must ensure that sufficient internal controls exist around the accounting system, the maintenance of the accounting records, the selection and application of accounting policies and procedures, as well as appropriate segregation of duties.

The Organization failed to demonstrate that it had adequate internal controls, processes and procedures in place to ensure that suitable safeguards and segregation of duties were maintained. As a result, non-arm's length transactions were conducted, where [REDACTED] one of the Organization's directors, accepted donations on the Organization's behalf from [REDACTED]. The donated funds were then used to acquire, on behalf of the Organization, corporate shares and other investment assets from the same non-arm's length representative (and donor), [REDACTED] via trust agreements that were signed solely by [REDACTED] in [REDACTED] capacity as director (buyer) and seller.

The Organization has failed to alleviate the concerns presented in our letter of October 7, 2021, with respect to the requirements of the Act, that it be constituted and operated exclusively for charitable purposes. It remains our position that the Organization failed to comply with the requirements outlined in subsection 149.1(1) of the Act, and as a result, we hereby intend to revoke the registration of the Organization under subsection 149.1(3) of the Act.

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

The Organization failed to exercise due care with respect to the completeness and accuracy of its books and records. Consequently it was unable to substantiate the use of its charitable resources, or to demonstrate that it had in place adequate internal governance to safeguard its charitable resources. It is our position that the Organization failed to demonstrate that it maintains adequate books and records as required.

#### **The Organization's response:**

The Organization stated that from its initial date of incorporation on February 9, 2011, through to the end of the fiscal period ending December 31, 2013, a professional accounting firm, [REDACTED]

██████████ prepared its financial statements, completed its Form T3010, and calculated its disbursement quota.

During these fiscal periods, the Organization's books and records were professionally prepared and maintained. In subsequent reporting periods, the Organization's accounting requirements were minimal, requiring only two or three entries per year.

In response to issues raised in our October 7, 2021, correspondence regarding the absence of written loan agreements outlining the terms and conditions of the \$55,000 non-arm's length liability between the Organization and ██████████ as reported during the fiscal period ending December 31, 2013, the Organization stated that a copy of a written legal agreement between ██████████ and the Organization was neither needed nor required. The Organization further stated that the \$55,000 received was properly reported in its books and records and documented by two bank drafts, totaling \$55,000, received during the fiscal period ending December 31, 2013. The Organization submitted copies of bank drafts in the amounts of \$35,000 and \$20,000. The loan amount of \$55,000 owed to ██████████ was considered to be 'paid in full' effective January 1, 2014, when the loan was converted to a charitable donation.

Regarding the audit findings with respect to the issuance of T4As and consulting fees, as detailed in our letter of October 7, 2021, the Organization stated that in the future it will issue T4As for compensation paid.

In addition, the Organization stated director E ██████████ is familiar with section 69 of the Act, and he ensured the Organization purchased its investments at fair market value, and that the purchases were supported by the appropriate documentation. The Organization stated that all required documentation was provided to the CRA in its October 15, 2018, response.

The Organization concluded that it maintained adequate documentary evidence to support the asset amounts reported in its Form T3010s during the fiscal periods under audit, and provided adequate books and records to CRA as required.

The CRA's conclusion:

The Organization has demonstrated a failure to satisfy the requirements of subsection 230(2) of the Act with respect to documentation demonstrating a reasonable and prudent evaluation of the use of charitable resources for the intended purpose of furthering the charitable purposes of the Organization. Accordingly, it remains our position that the Organization failed to exercise due care with respect to the maintenance of adequate books and records to demonstrate it devoted its resources in furtherance of charitable purposes, or to demonstrate adequate internal governance to safeguard its charitable resources.

The Organization failed to alleviate the concerns presented in our letter of October 7, 2021, with respect to its failure to maintain adequate books and records. It remains our position that the Organization failed to comply with the requirements outlined in subsection 230(2) of the Act,



and as a result, we hereby intend to revoke the registration of the Organization under subsection 149.1(3) of the Act.

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

The Organization issued a donation receipt not in accordance with the Act, in that it failed to obtain adequate documentation to support the receipted value of a non-cash gift of property (gift in kind) reported as received, it failed to demonstrate that a transfer of property occurred in relation to the gift in kind, and it failed to ensure that adequate internal controls and segregation of duties were applied in its donation receipting practices.

##### The Organization's response:

The Organization maintains that the donation receipt # 4, dated January 1, 2014, and issued to [REDACTED] in the amount of \$55,000, was proper and correct.

In addition, the Organization states that an equal amount of \$55,000 was properly reported on line 4320, Amounts owing to non-arm's length persons, in its Form T3010 for its fiscal period ending December 31, 2013. The Organization states that the amount of \$55,000 was verified and supported in the Organization's books and records by two bank drafts totaling \$55,000.

The Organization's position is that it properly and correctly issued donation receipts in accordance with the Act and its Regulations.

##### The CRA's conclusion:

The Organization failed to provide adequate information and documentation to support the eligibility of the official donation receipt issued in 2014. In circumstances where a creditor provides a loan to a charity, a charity cannot simply issue an official donation receipt to the creditor for the amount of the outstanding loan balance, in lieu of repayment of the liability.<sup>1</sup>

As the Organization failed to demonstrate that a transfer of property occurred between it and the donor, the reported donation lacks all the required elements outlined in the CRA definition of an eligible gift.

The Organization failed to alleviate the concerns presented in our letter of October 7, 2021, with respect to its donation receipting practices. It remains our position that the Organization failed to issue receipts in accordance with the Act and its Regulations, and as a result, we hereby intend to revoke the registration of the Organization under subsection 168(1)(d) of the Act.

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<sup>1</sup> A loan of property involves granting a right to use property for a period of time. Since there is no transfer of property, it does not qualify as a gift and a receipt cannot be issued. Please see our website at [canada.ca/en/revenue-agency/services/charities-giving/charities-giving-glossary.html](https://canada.ca/en/revenue-agency/services/charities-giving/charities-giving-glossary.html) for additional details.



## **5. Failure to comply with the requirements of the Act for its continued registration**

During the fiscal periods ending December 31, 2012 through December 31, 2016, the Organization failed to comply with requirements of subsection 149.1(1) the Act, which outlines specific requirements of registered charities by type (charitable organization, public foundation, private foundation). Specifically, donations received from [REDACTED], who was a member of the Organization's board of directors during the applicable fiscal periods, exceeded 50% of the total capital of the Organization while it was registered as a public foundation (in non-compliance with clause 149.1(1)(b)(i)(A) and (B) of the Act).

### The Organization's response:

The Organization stated that it should be re-designated from a "public" foundation to a "private" foundation, and that it had, in fact, filed a Form T2095, Registered Charities Application for Re-Designation, on June 1, 2015, to become a "private" foundation.

The Organization further stated that it received an acknowledgement letter from the CRA on July 10, 2015, and a Notice of Re-Designation from the CRA on May 9, 2016, confirming that it was re-designated as a "private" foundation effective January 1, 2017.

The Organization concluded that as it had been re-designated from a "public" foundation to a "private" foundation effective January 1, 2017, it has therefore complied with the requirements of the Act for its continued registration.

The Organization submitted a copy of the Form T2095, the acknowledgement letter from the CRA dated July 10, 2015, and the Notice of Re-Designation from the CRA dated May 9, 2016.

### The CRA's conclusion:

The Organization failed to comply with requirements of subsection 149.1(1) the Act during the fiscal periods ending December 31, 2012 through December 31, 2016, as it operated as a private foundation where it received more than 50% of its contributions from its director, [REDACTED], while it was registered as a public foundation.

The Organization failed to alleviate the concerns presented in our letter of October 7, 2021, with respect to its failure to comply with the requirements of the Act for its continued registration. It remains our position that the Organization failed to comply with clauses 149.1(1)(b)(i)(A) and (B) of the Act for the periods from January 1, 2012 to December 31, 2016, and as a result, we hereby intend to revoke the registration of the Organization under subsection 149.1(3) and paragraph 168(1)(b) of the Act.

## Qualified Donees

### 149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

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

(ii) a municipality in Canada,

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

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

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

(b) a registered charity,

(b.1) a registered journalism organization,

(c) a registered Canadian amateur athletic association, or

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

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

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

(a) carries on a business that is not a related business of that charity;

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

(c) makes a disbursement by way of a gift, other than a gift made

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

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

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

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

(a) carries on a business that is not a related business of that charity;

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

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

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

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

(c) since June 1, 1950, acquired control of any corporation;

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

(e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

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

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

(a) carries on any business;

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

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

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

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

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

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

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

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

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

(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which

paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;

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

(f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

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

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

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

(a) applies to the Minister in writing for revocation of its registration;

(b) ceases to comply with the requirements of this Act for its registration;

(c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(e) fails to comply with or contravenes any of sections 230 to 231.5; or

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

### **168 (2) Revocation of Registration**

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

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

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

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

#### **168 (4) Objection to proposal or designation**

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

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

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

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

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **180 (1) Appeals to Federal Court of Appeal**

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

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

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

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

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

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

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

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

## **Tax and Penalties in Respect of Qualified Donees**

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

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

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

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

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

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

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

$$A - B$$

where

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

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

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



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

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

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

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

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

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

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

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

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

- (ii) that is not the subject of a suspension under subsection 188.2(1),
  - (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
  - (iv) that has filed all information returns required by subsection 149.1(14), and
  - (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or
- (b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

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

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

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

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

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

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

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

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

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

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

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

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

### **188 (5) Definitions – In this section,**

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

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

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

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

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

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

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

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

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

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

exceeds

  - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which

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

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

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

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

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

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

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