



November 10, 2022

REGISTERED MAIL

Sidney Aisenstark
Secretary Treasurer
Canadian Friends Of Kneset Bnei Hagola
6351 De Vimy
Montreal, QC H3S 2R5

BN: 886960590 RR0001
File #: 0492256
[REDACTED]

Dear Sidney Aisenstark:

**Subject: Notice of intention to revoke
Canadian Friends Of Kneset Bnei Hagola**

We are writing with respect to our letter dated November 18, 2021 (copy enclosed), in which Canadian Friends Of Kneset Bnei Hagola (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2018 to December 31, 2018. 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.

As of this date, and despite issuing two extensions to the timeframe for a response, we have not received any response to our letter. As the Organization has not addressed our concerns, it remains our position that its charitable registration should be revoked.

Conclusion

The Organization was previously audited for its fiscal periods ending December 31, 2013 and December 31, 2014. Following the previous audit, the Organization was provided with the opportunity to address its areas of non-compliance by entering into a compliance agreement with the CRA, signed on March 3, 2016. By signing the agreement, the Organization agreed to implement corrective measures.

The present audit by the CRA found that the Organization has demonstrated repeated non-compliance with the requirements set out in the Act. In particular, it was found that, notwithstanding its agreement to enact specific corrective measures to become fully compliant, the Organization failed to be constituted for exclusively charitable purposes, failed to maintain adequate books and records, failed to maintain direction and control over the use of charitable resources, provided its charitable resources to non-qualified donees, conferred non- incidental private benefits, issued donation receipts not in accordance with the Act and its Regulations, and failed to file an Information Return as and when required by the Act. 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 November 18, 2021, and pursuant to subsection 168(1) and 149.1(2) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

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

Business number	Name
886960590RR0001	Canadian Friends Of Kneset Bnei Hagola Montreal QC

As noted in our letter dated November 18, 2021, we informed you that the CRA may revoke the charitable registration of the Organization.

After considering the Organization's response, this letter is to inform you that the CRA has decided to issue a notice of intention to revoke the Organization's registration and will 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. It was found that the Organization demonstrated serious and repeated non-compliance with the requirements 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 Appeals Branch, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing

this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

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

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at canada.ca/charities-giving;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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 November 18, 2021
- Appendix A, Relevant provisions of the Act

c.c.: Avraham Glustein
Vice-president



November 18, 2021

Sidney Aisenstark
Secretary Treasurer
Canadian Friends Of Kneset Bnei Hagola
6351 De Vimy
Montreal, QC H3S 2R5

BN: 88696 0590 RR0001
File: 0492256

Dear Sidney Aisenstark:

Subject: Audit of Canadian Friends of Kneset Bnei Hagola

This letter results from the audit of Canadian Friends of Kneset Bnei Hagola (Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2018, to December 31, 2018.

In 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 be constituted for exclusively charitable purposes	149.1(1), 168(1)(b)
2. Failure to maintain adequate books and records	149.1(1), 230(2), 168(1)(b), 168(1)(e)
3. Failure to maintain direction and control over the use of charitable resources	149.1(1), 168(1)(b)
4. Providing charitable resources to a non-qualified donees	149.1(1), 168(1)(b)
5. Delivery of unacceptable non- incidental private benefits	149.1(1), 168(1)(d), 188.1(4)
6. Issuing receipts not in accordance with the Act and/or its Regulations	149.1(1), 168(1)(d), 188.1(7) or 188.1(9), Regulation 3500 and 3501(1)
7. Failure to file an Information Return as and when required by the Act	149.1(1), 149.1(14), 168(1)(c)
8. Charitable Designation	149.1(1)

Registered charities must comply with the law, failing which penalties and/or suspensions may be applicable pursuant to sections 188.1 and/or 188.2 of the Act. These include suspension of the Organization's authority to issue official donation receipts and suspension of its status as a "qualified donee". While the purpose of a sanction is to provide an alternative to revocation, notice may still be given of our intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements applicable to registered charities, and which may be subject to sanctions or revocation under the Act. The Organization will be provided with the opportunity to make representations or present additional information as to why a sanction or revocation actions should not be applied.

Background

The CRA advised the Organization in a letter dated October 15, 2019, that it had been selected for an audit of fiscal period ending December 31, 2018. Our letter confirmed the audit represented a follow up to our previous audit, conducted in 2016 for the fiscal periods ended December 31, 2013, and December 31, 2014, wherein the Organization agreed to enter into a compliance agreement with the CRA (copy attached). The compliance agreement obligated the Organization to implement specific corrective measures in order to fully comply with the provisions of the Act.

The Organization provided a response to our request for information letter, and we have now completed our review of that response. The balance of this letter describes the identified areas of non-compliance and the sanctions / penalties proposed in further detail.

Identified areas of non-compliance:

1. Failure to be constituted for exclusively charitable purposes

Since the terms "charity" and "charitable" are not defined in the Act, it is necessary to refer to the common law to determine if a particular object is charitable. The courts have recognized as charitable those objects that (1) relieve poverty, (2) advance education, (3) advance religion, or (4) benefit the community in a way that the law regards as charitable. The fourth category identifies an additional group of specific court-recognized objects. It does not mean that all objects that might be considered beneficial to the public qualify as charitable at law.¹

¹ These four broad categories of charitable objects were outlined by Lord Macnaghten in Commissioners for Special Purposes of the Income Tax v Pemsel, [1891] A.C. 531 (P.C.) (Pemsel). The classification approach was first explicitly approved of by the Supreme Court of Canada in Guaranty Trust Co. of Canada v Minister of National Revenue, [1967] S.C.R. 133, and confirmed in 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).

It is a basic and important principle of charity law that to be charitable, the stated objects of an organization be expressed as clearly as possible, in precise as opposed to broad and vague terms, to ensure that the organization does not have the legal capacity to engage in non-charitable activities. Where there is any doubt as to whether an object is charitable, or where there is a mix of charitable and non-charitable objects, the courts have determined that an organization should not be registered as a charity.²

Broad objects are often expansive and do not always express a direct or tangible charitable benefit. They can permit both charitable and non-charitable activities. Vague objects are ambiguous and can be interpreted in many different ways, making it unclear that an organization has charitable intentions. A charitable object should identify the reason the Organization is established, how it will accomplish its goals, and who will benefit. In order for an object to be charitable, the wording must not be broad or vague.

As confirmed by the Supreme Court of Canada in its decision in Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue (M.N.R.), the determination as to whether an organization qualifies as a charity is, in essence, a two-part test:

- i) the objects of the organization must be exclusively and legally charitable under common law, and must define the scope of the activities engaged in by the organization; and
- ii) all of the organization's resources must be devoted to these activities.

In addition, for an organization to be considered charitable under the Act, it must be found to operate for public benefit. The determination of the public benefit requirement also involves the application of a two-part test:

- i) The first part of the test generally requires that a tangible or objectively measurable and socially useful benefit be conferred, directly or indirectly.³
- ii) The second part of the test requires that the benefit be delivered to the public as a whole, or to a sufficient section of the public.⁴

To summarize, the CRA must be satisfied that the objects being pursued are charitable in law, that there is a clear relationship and link between the activities and the objects, and that the activities themselves do not fall outside the bounds of what can be considered charitable in the

² In *Earth Fund v Canada* (M.N.R.), 2002 FCA 498 at para.20,57 D.T.C. 5016, the Court held that "[a]s a matter of law, the appellant is not entitled to registration as a charity unless all of the appellant's corporate objects and activities are exclusively charitable."

³ See generally, *Vancouver Society of Immigrant & Visible Minority Women v Minister of National Revenue*, [1999] 1 S.C.R. 10, at para.41, and *Gilmour v Coats et al.*, [1949] 1 All E.R. 848.

⁴ See CRA's Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test, for further information.

legal sense. In conducting this review, we are obliged to take into account, and to draw reasonable inferences from, all of the relevant information that may be available to us.

Among the various aspects that an audit may examine is whether a charity advances objects which are charitable at law. Maintaining charitable registration demands that a charity continues to meet the existing statutory and common law requirements associated with registered status. Accordingly, although a charity's formal objects may have been accepted at the time of its registration, it is possible they may be determined to no longer qualify as charitable at law in the course of a subsequent audit. In addition, it is possible that the activities and focus of an organization may have changed since its initial registration. Such changes may adversely affect the organization's present day eligibility for continued registration.

To maintain registration as a charity, an organization must ensure that its activities remain charitable and further its stated charitable objects. The objects of a charity describe the aim or main intent of the organization, and the activities describe how the organization will accomplish its objectives. In this regard, the CRA must be satisfied that an organization's objects remain exclusively charitable in law throughout its existence as a registered Canadian charity, and that its activities directly further its charitable objects in a manner permitted under the Act.

Audit Findings

The previous audit determined that the Organization was not operating in furtherance of its sole stated charitable purpose. In accordance with a resolution to amend (dated March 26, 2008) the Organization's Constitution (dated April 7, 1977), the current sole registered charitable purpose is as follows:

“To provide scholarships to needy students to attend Kneset Bnei Hagola and other schools”.

The previous audit determined the “scholarships” paid by the Organization were not paid to needy students, rather they represented stipends or honorariums paid to “scholars” to study the Talmud and Talmudic laws, and to implement the laws to modern Jewish living. In addition, the Organization had expressed a wish to add a new objective to its Constitution, and submitted a statement of activities (dated January 5, 2016) describing its intent to provide loans to needy persons and to provide food, clothing, medical help, and rent payments for persons in rental arrears.

Pursuant to the above, the Organization agreed to enact the corrective measures outlined in the compliance agreement, including a requirement to submit any proposed amended charitable purposes to the Charities Directorate for review and approval.

The Organization did submit a request to amend its charitable objects on July 5, 2016. The proposed new purposes were as follows:

“To advance religion to adherents of the faith or the public by establishing, maintaining and supporting a house of worship with services held in accordance with the tenets and doctrines of the faith; and

To relieve poverty by providing relief to the poor.”

The proposed amended purposes were re-submitted for review and approval on June 14, 2017, with a minor adjustment, that is, “To relieve poverty by providing relief to the poor” changed to simply state “To relieve poverty”. On March 4, 2019, the Organization submitted a follow-up request for consideration of the proposed amendments to its registered objects, as stated in its correspondence dated June 14, 2017.

CRA Guidance CG-019, How to draft purposes for charitable registration, to be eligible for charitable registration, notes that a purpose should identify three elements:

i) The charitable purpose category

To establish that the purpose falls within one of the four broad categories of charity (for example, “to relieve poverty,” “to advance education,” “to advance religion,” or “to promote health”)

ii) The means of providing the charitable benefit

To define the scope of the activities that can be conducted to directly further the purpose and ensure the provision of a charitable benefit (for example, “by providing housing,” “by operating a school,” “by conducting prayer services that advance the teachings of Islam,” or “by operating a hospital”)

iii) The eligible beneficiary group

To ensure the charitable benefit is provided to the public or a sufficient section of the public (for example, “for the poor” or “for the general public”)

Moreover, an organization’s activities must relate to, and further, the charitable purposes of the organization. In consideration of the above, the Organization’s proposed objects were determined to be unacceptable.

The purpose proposed in the Organization’s March 4, 2019, correspondence, “[t]o advance religion to adherents of the faith or the public by establishing, maintaining, and supporting a house of worship with services held in accordance with the tenets and doctrines of the faith” does not relate to activities carried out by the Organization. The Organization’s activities are neither related to, nor further, this proposed purpose, and there is no information on file that suggests the Organization operates a house of worship. This was confirmed in the representations provided in response to our request for information letter (“at present there is no house of worship”).

The proposed purpose “To relieve poverty” is too broad and vague, and does not identify elements ii) and iii) above.

The Organization has failed to provide adequate proposed charitable objects to replace and/or amend its existing purpose. The current sole charitable purpose of the Organization remains “To provide scholarships to needy students to attend Kneset Bnei Hagola and other schools”.

Moreover, the previous audit determined the this purpose inaccurately reflected the Organization’s activities, and the current audit confirmed that the Organization has failed to carry out activities in furtherance of its stated purpose (i.e. charitable resources are distributed for the purpose of conducting Talmudic research and studies, not distributed as scholarships to achieve academic standing, awarded based upon financial need).

Summary

Based on the documentation and information reviewed it appears that the Organization has not demonstrated that it is operated for exclusively charitable purposes, and as such has failed to implement the corrective measures agreed to when is signed the compliance agreement following the previous audit. Accordingly, it is our position that the Organization has failed to meet the requirement of subsection 149.1(1) of the Act, that it devote substantially all its resources in furtherance of the charitable purposes for which it was registered. For this reason, it appears there may be grounds to revoke the Organization’s charitable status under paragraph 168(1)(b) of the Act.

2. 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,⁵
- 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,⁶ 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.⁷

Audit Findings

The audit revealed that the Organization failed to satisfy the requirements of paragraph 230(2)(a) of the Act, as documentation in support of information reported was found to be incomplete and / or inadequate. In the course of the audit, the Organization's books and records failed to demonstrate that its resources were used in furtherance of its own activities, and that those activities were in support of its charitable purposes in a manner consistent with the common law. Specific areas of concern are described as follows:

i) Scholarship / Scholar Stipends / Honorariums

In the audit period, the Organization distributed charitable resources to applicant beneficiaries for financial support, alternatively referred to as 'scholarships' and 'scholar stipends'. In support of the funds transferred to scholars for religious studies, the Organization provided application forms detailing tombstone information, educational background, references, and an approved stipend amount, as well as religious education transcripts, certification, etc. The information did not include details of eligibility criteria, selection considerations, review, vetting and approval processes or financial documents demonstrating issuance, receipt and application of the amounts awarded.

⁵ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

⁶ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

⁷ See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.

The documentation provided in the course of the audit failed to demonstrate confirmation of stated income information having been collected and reviewed. In the absence of documentation to adequately support the financial need of the beneficiaries awarded, the Organization did not further charitable purposes relating to relief of poverty.

No financial or progress reporting was received and maintained by the Organization to confirm the application of its charitable resources in furtherance of its own charitable purposes. In the absence of expenditure reconciliations of the application of stipend funds awarded, or research papers and/or reports to quantify results, the Organization failed to demonstrate that charitable purposes relating to advancement of religion, or advancement of education, were furthered.

Additionally, two of the applicant beneficiaries ([REDACTED] and [REDACTED]) who received charitable resources, were determined to have non-arm's length relationships⁸ to the Organization's representative Sidney Aisenstark. The Organization is required to maintain adequate books and records to demonstrate internal controls were sufficiently applied to safeguard its charitable assets. In particular, where beneficiaries of financial support hold relationships that are non-arm's length to the Organization, appropriate secondary documentation demonstrating a review and approval process by a quorum of directors is required to ensure suitable internal controls and segregations were enacted by the governance of the Organization.

ii) Personal Loans

In the audit period, the Organization issued interest free personal loans to selected applicant beneficiaries. The purpose of the activity appears to be to provide financial assistance to poor individuals and families for the relief of poverty via interest free loans.

CRA publication CG-014, Community economic development activities and charitable registration, notes that the provision of loans, including micro-loans and loan guarantees to eligible beneficiaries, may be charitable if they directly further one or more of the four categorized charitable purposes. Our audit revealed, however, that the Organization does not maintain or request adequate documentation necessary to prove the recipient individuals are objects of charity nor does the Organization have defined selection criteria to establish the financial need of the applicants.

The application form used by the Organization requires the individual to provide tombstone data including contact information, employer, number of dependents, occupation as well as the purpose of the application. The aforementioned form collects limited detail regarding the

⁸ The term "not at arm's length" means persons acting in concert without separate interests or who are related. Related persons are individuals who are related to each other by blood, marriage, common law partnership, or adoption. Related persons also include individuals or groups and the corporations in which they have a controlling interest. Persons related to these individuals or groups are also considered related to those corporations. For more information on arm's length, see Income Tax Folio S1-F5-C1, Related persons and dealing at arm's length.

applicant's income, expenses, assets and liabilities (that is, whether or not a home is owned or rented, monthly payment, and total annual household income). The application forms were inconsistently completed (example: household income omitted, spouse and spouse's income not identified), and no documentation confirming stated financial need was maintained in the books and records.

Without supporting documentation to substantiate the individual's level of income or lack thereof, and a defined selection criteria, we cannot ascertain that the individuals are poor or that the funding was provided in order to relieve the effects of poverty. The Organization has an obligation under the Act to establish that the individuals are in fact poor so as to demonstrate that it is devoting its resources to its own charitable activities.

In the course of the audit, the Organization failed to provide copies of the following records to demonstrate that it meets the means test: documentation provided by the applicants to verify application information, minutes of in-person meetings with applicants and in-person or telephone meetings with the applicant's guarantors. The Organization has advised that it does not prepare minutes of any meetings or conversations held.

Additionally, two applicant beneficiaries [REDACTED] and [REDACTED] who were provided with charitable resources without interest, were determined to have non-arm's length relationships to the Organization's representative Sidney Aisenstark. The Organization is required to maintain adequate books and records to demonstrate internal controls were sufficiently applied to safeguard its charitable assets. In particular, where beneficiaries of financial support hold relationships that are non-arm's length to the Organization, appropriate secondary documentation, demonstrating a review and approval process by a quorum of directors, is required to ensure suitable internal controls and segregations are in place.

The Organization does not appear to maintain a benchmark for reviewing applications. On their own, most applications do not establish the recipient as impoverished to the extent that issuances of interest-free loans achieve the charitable purpose of providing relief of poverty. Instances were observed of applicants' stated needs ranging from general statements of 'miscellaneous expenses' to incidental and elective expenditures such as 'wedding expenses'. We were provided no evidence to indicate that the Organization's representatives verified the information provided in the applications. The mere fact that an Organization's representative, or member of the board of directors, or the person approving applications, may have had personal knowledge of the applicants does not constitute evidence that the funding was being made to relieve poverty. Personal knowledge cannot be a substitute for a properly applied and documented selection criteria that serves to prove that a charity is in fact devoting its resources to its own charitable activities in a manner consistent with the Act.

iii) Ohr Le Nefesh

In the course of the audit period, the Organization received applications, and distributed funds in payment, to provide therapy services for selected applicant beneficiaries. The copies of

application forms provided identify the program as "Ohr Le Nefesh". Concurrently, the Organization issued official donation receipts to individuals in recognition of contributions designated for the Ohr Le Nefesh program and amended the charity name on its donation receipts issued to reflect "Kneset Bnei Hagola – OHR LE NEFESH" (note: the registered name of the Organization with the Minister is Canadian Friends of Kneset Bnei Hagola).

Our records indicate the following with respect to Ohr Le Nefesh: "Ohr Le Nefesh is a non-profit organization in Jerusalem providing social work, psychiatric rehabilitation, counseling and advice to adults with a range of mental health problems. Ohr Le Nefesh also provides rehabilitation programs and sheltered housing projects to help their clients as they integrate into society. Ohr Le Nefesh is based in the heart of Jerusalem, however, clients come from throughout Israel and all over the world. Ohr Le Nefesh plays an exclusive role in the Jewish community as one of the only organizations that is able to provide specific care for individuals suffering from mental health issues in the religious community. Ohr Le Nefesh is staffed by social workers and other trained professionals, and is dedicated to enabling clients to become self sufficient and increasingly independent."

Irrespective of the fact that provision of therapy services for selected beneficiaries does not relate to a charitable purpose for which the Organization was registered, the scope of the information and documentation provided in relation to the activity was found to be inadequate. The books and records failed to include a detailed selection criteria, lacked sufficient reference or referral documentation to confirm financial or medical needs of the applicants, and failed to provide a reconciliation of expenditures incurred to applications received, reviewed and approved. The use of the "Ohr Le Nefesh" nomenclature appears to relate to a third party non-qualified donee entity and its program / activity. The documentation did not include an agency or intermediary agreement detailing the terms and scope of any joint undertaking applicable. The lack of review documentation, meeting minutes, secondary correspondence, etc. resulted in a determination the Organization has no direction or control over the distribution of its charitable resources in relation to Ohr Le Nefesh.

iv) Donation Receipts

The Organization provided a summary listing of the official donation receipts issued in the fiscal period ending December 31, 2018. Following audit recalculation, the listing identified a total amount of \$161,073.90. The amount reported on Line 4500, Total eligible amount of all gifts for which the charity has issued tax receipts, totalled \$149,378.00. The discrepancy of \$11,695.90 was not reconciled in the information and documentation provided.

Summary

The audit found that the Organization failed to provide support for expenditures reported in its Form T3010s, Registered Charity Information Returns in the audit period. As a result, the Organization failed to demonstrate that it devoted all of its resources to its own charitable activities as required by the Act.

Under paragraph 188.2(2)(a) of the Act, a registered charitable organization may be issued a sanction notice to suspend the organization's authority to issue official donation receipts where it has been found to contravene subsection 230(2) of the Act.

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. Due to the serious nature of the non-compliance issues identified during the audit, we are proposing to revoke the Organization's status as a registered charity in accordance with section 168(1)(e) of the Act, in lieu of assessing a suspension.

3. Failure to maintain direction and control over the use of resources

Subsection 149.1(1) of the Act defines a charitable organization, which reads in part as:

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

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

Accordingly, a charitable organization must be careful with respect to how it carries on its activities, and it must ensure that it keeps sufficient direction and control over its resources, as opposed to transferring money to non-qualified donees, which is not a charitable activity.

Though made in reference to an agency relationship, the underlying principles enunciated by the Federal Court of Appeal in Canadian Committee for the Tel Aviv Foundation v Canada are applicable to most intermediary arrangements:

Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations Overseas.⁹

And

Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities.¹⁰

⁹ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] 2 CTC 93.

¹⁰ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

As re-iterated by the Court in *Lepletot v MNR*,¹¹ an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.¹²

Consequently, where a registered charity undertakes an activity through an intermediary, it must be able to substantiate that it has actually arranged for the conduct of that specific activity on its behalf and has not simply made a transfer of funds to a non-qualified donee. It must be able to demonstrate that it maintains direction and control over, and is fully accountable for, the use of its resources. To this end, a charity would be expected to:

- select the activity that it will conduct with or through an intermediary based on the fact that it will further the charity's charitable purposes, and after being satisfied that the intermediary is capable of conducting the activity on the charity's behalf; and
- supervise/direct, and make significant decisions in regard to the conduct of, the activity on an ongoing basis.

To this end, the Organization is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Organization must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,¹³ and are actually implemented. For instance, the documentation should include:

- a clear, complete, and detailed description of the activity that is to be conducted, how it furthers the charitable purposes of the Organization and how it is to be carried out by the project participant on the Organization's behalf, including parameters, deliverables, milestones or goals;
- provision for real and effective monitoring and supervision of the activity, and the project participant carrying on the activity, with mechanisms for someone accountable to the

¹¹ *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

¹² *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

¹³ See *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

Organization to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis; and

- a requirement for the Organization to receive regular, meaningful reports as the activity progresses. To be meaningful, reporting requirements must specify issues to be covered, and when they must be submitted, to ensure the Organization has the opportunity to make significant decisions in regard to the conduct of the activity on a timely and ongoing basis.

CRA Guidance CG-002, Canadian Registered Charities Carrying Out Activities Outside Canada,¹⁴ sets out the guidelines that we use to help us assess whether a registered Canadian charity exercises the necessary degree of effective direction and actual control, in greater detail.

By observing these guidelines and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship existed in fact, and that it maintained effective direction and actual control over its resources at all times.

The existence of either a written or verbal agency agreement is only one example of evidence required to show that a sufficient principal-agent relationship truly exists. Through documented evidence, the charity must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship.

Thus, the charity must provide the CRA with a means of examining the internal decision making mechanisms within the charity's own structure through records, such as: minutes of board meetings; internal communications (that is, memoranda). It must also provide policies and procedures that show that the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship.

Audit Findings

In the documentation provided by the Organization in the course of the audit, a signed memorandum was included (dated September 1, 2017) confirming Melech Lehman as the authorized intermediary responsible for the disbursement of the charity's funds in two areas: "to those scholars who are engaged in Talmudic research, and to the very poor and needy who request help". This document confirms the intermediary identified in an agency agreement previously submitted to CRA (dated July 15, 2009).

As noted in Section 2, Books and Records, above, the Organization failed to provide adequate documentation to demonstrate ongoing direction and control over charitable resources distributed via scholar stipends, personal loans, and 'Ohr Le Nefesh' therapy services. No ongoing financial and / or progress reporting was made available and no documentation demonstrating the

¹⁴ [Canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html](http://www.cra-arc.gc.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html)

application of resources, reconciliation of funding, selection criteria, review and approval considerations (including committee notes, meeting minutes, secondary communications etc.) were provided.

With respect to the above, during the course of the audit, the Organization did not provide sufficient documentation to demonstrate that it maintains direction and control over the activities for which it provides funds. Rather, the 'Ohr Le Nefesh' program appears to be an activity of a third party non-qualified donee entity. The application forms state "the amount (awarded) will be determined by Ohr Le Nefesh based on a sliding scale. The applicant's financial situation will be assessed by one of four local [REDACTED]

[REDACTED] or [REDACTED] will monitor client's progress by contacting the mental health providers periodically."

It appears from the information and documentation provided during the audit that Ohr Le Nefesh maintains direction and control over the application of the Organization's resources; that is, any decisions made by the Organization's board are subject to Ohr Le Nefesh representative's approval and authorization.

In addition, the 'scholar stipends' awarded to individual applicant beneficiaries, do not appear to be expenditures incurred in the carrying out of a charitable activity by the Organization itself. During the audit, the Organization did not provide documentation demonstrating that it reviewed and evaluated the applications in regards to need for financial support, and no selection committee member listing or minutes / resolutions regarding how the recipient beneficiaries were selected. As a result, the Organization was unable to demonstrate that it maintained direction and control over the selection and awarding of the scholar stipends.

For purposes of the Act, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. A registered Canadian charity must exercise direct, effectual, and constant responsibility for undertaking the charitable activities to which its resources were applied.

Summary

Based on the documentation and information reviewed, it appears that the Organization did not maintain effective direction and control over the use of its funds, as required by the corrective measures agreed to when it signed the compliance agreement following the previous audit. Accordingly, it is our position that the Organization has failed to meet the requirement of subsection 149.1(1) of the Act, that it demonstrate it devoted substantially all of its resources to charitable activities carried on by the Organization itself. For this reason, it appears there may be grounds to revoke the Organization's charitable status under paragraph 168(1)(b) of the Act.

4. Providing charitable resources to a non-qualified donee

The audit review identified several transfers of charitable resources to non-qualified donees, both organizations and individuals, during the audit period. As noted in section 3, Failure to maintain direction and control over the use of resources, above, the Act defines a charitable organization, which reads in part as:

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

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

Charitable purposes include the disbursement of funds to qualified donees. Accordingly, a charitable organization must be careful about how it carries on its activities and it must ensure that it keeps sufficient direction and control over its resources, as opposed to simply transferring money to non-qualified donees, which is not a charitable activity.

A “qualified donee” means an entity defined in subsection 149.1(1), and are as follows:

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
- a listed Canadian municipality;
- a registered journalism organization;
- a listed municipal or public body performing a function of government in Canada;
- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

As the Act specifically states what constitutes a qualified donee, entities not expressly stated in this list are not considered qualified donees.

Audit Findings

In the audit period, several transfers of charitable resources to non-qualified donees were observed for which inadequate documentation and information was provided to confirm whether these transfers were intended to further the charitable purposes for which the Organization was registered.

As outlined above in Section 2, Failure to maintain adequate books and records, and Section 3, Failure to maintain direction and control over the use of charitable resources, failure to maintain adequate information and documentation to demonstrate ongoing direction and control over the activities carried undertaken with the Organization's resources resulted in a determination that the Organization had provided gifts to non-qualified donees.

Further to the above, additional distributions to non-qualified donees were observed during the audit period, including:

- i) The Organization received a donation receipt from [REDACTED] [REDACTED] a non-resident, non-qualified donee, in acknowledgement of a gift it had received from the Organization, in the amount of \$1,544.48, "in gratitude for assisting us".
- i) The Organization reported a distribution of funds totaling \$500.00 to a revoked charitable organization on Form T1236, Qualified Donees Worksheet / Amounts Provided to Other Organizations, a document related to Form T3010. The entity in question, Vaad Mishmeres Mitzvos (formerly registered under 89061 8796 RR0001), was revoked as a registered Canadian charity effective January 7, 2017.

For purposes of the Act, when a registered charity transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and control over those resources, the result is the same as if it had made a gift to a non-qualified donee.

Summary

In the absence of adequate information and documentation to substantiate charitable purposes of funds distributed as well as ongoing direction and control over charitable resources, the Organization appears to have provided its charitable resources to non-qualified donees in the audit period. Accordingly, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For these reasons it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

5. Delivery of unacceptable non-incidental private benefits

The Organization is registered as a "charitable organization", the definition of which is provided in subsection 149.1(1) of the Act and above in Section 4, Providing charitable resources to a non-qualified donee. In order to maintain its status as a registered charity, the Organization must adhere to the terms of the definition which includes the requirement that "no part of the income

of which is payable to, or otherwise available for, the personal benefit of any proprietor; member, shareholder, trustee or settler thereof.”

Generally, a personal benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a beneficiary that exceeds the bounds of charity. It is the charity’s responsibility to demonstrate that any personal benefit it provides is acceptable.

In some cases, personal benefits that are more than incidental under the common law will meet the criteria of an “undue benefit” under the Act. A registered charity cannot confer on a person an undue benefit including disbursements by way of a gift or the amounts of any part of resources, or otherwise make available for the personal benefit of any person who is a member of the charity, or who deals not at arm’s-length with the charity.

These disbursements will qualify as an undue benefit unless they fall into one of the three exceptions. These exceptions are when a disbursement is: a) a reasonable amount paid for property acquired by the charity or services rendered to the charity b) an amount used in the carrying out of a charitable activity, unless the charitable beneficiary was chosen solely because of their relationship to the charity c) a gift to a qualified donee.

The delivery of unacceptable personal benefits is both an offense subject to penalty (under subsection 188.1(4) of the Act as an “undue benefit”) and a revocable offense (under paragraph 168(1)(b) of the Act).

Audit Findings

The Organization transferred its resources to non-arm’s length parties in the absence of adequate documentation and information to support the charitable purpose of the outlays as described above (Section 2, Books and records).

In addition to not providing sufficient supporting documentation to support the connection between the activities undertaken and the Organization’s charitable purposes, other considerations were applied to determine whether an undue benefit had been conferred upon a non-arm’s length beneficiary. Examples include:

- i) The personal loan applications identified non-arm’s length parties [REDACTED] and [REDACTED] [REDACTED] as spouses with household income stated of \$78,000.00. The requested funds of \$3,000.00 [REDACTED] and \$1,000.00 in US currency [REDACTED] were described as needed for “miscellaneous expenses”.
- ii) Cancelled cheques matched to payments issued to [REDACTED] and [REDACTED] were observed as signed by representative Sidney Aisenstark solely (no dual signature controls applied).

Summary

It is our position that the Organization has used its resources for the benefit of a non-arm's length person and not for charitable purposes. Under subsection 149.1(1) 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.

Subsection 188.1(4)(a) of the Act states a registered charity that confers an undue benefit by providing its resources to a non-qualified donee is liable to a penalty under this Part for the taxation year equal to 105% of the amount of the gift.

Due to the serious nature of the non-compliance, it is our view that a penalty under 188.1(4)(a) of the Act may be assessed against the Organization for conferring an undue benefit by providing charitable resources to entities other than qualified donees. Below we have included a calculation of the applicable financial penalty:

Fiscal period ending December 31, 2018

Funds transferred to [REDACTED]	\$ 3,000.00
Funds transferred to [REDACTED]	1,277.70 ¹⁵
Funds transferred to [REDACTED]	2,500.00
Funds transferred to [REDACTED]	<u>5,000.00</u>
	11,777.70
Penalty of 105%	x 105%
Total penalty	\$ 12,366.59

The total penalty owing under the provisions of subsection 188.1(4)(a) of the Act would be \$12,366.59. However, due to the serious nature of the other non-compliance issues identified during the audit, we are proposing to revoke the Organization's status as a registered charity in accordance with section 168(1)(d) of the Act in lieu of assessing a penalty. We reserve the right to revisit this decision before making a final determination regarding the Organization's status.

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

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires 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 duplicate¹⁶ of each receipt containing prescribed information for a donation received by it"

¹⁵ The amount of \$1,277.70 was derived using a conversion rate of 1.2777 from US currency to Canadian currency. The conversion rate was matched to the rate used by the Organization in converting its official donation receipt number 4272.

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:

The audit identified concerns with respect to the issuance of, and procedures applicable to, official donation receipts. In particular, the following deficiencies were noted:

i) Information disclosures

The duplicate donation receipts provided by the Organization were found to generally include required information disclosures outlined in Regulation 3501(1) of the Act with the following exceptions:

- The date on which the receipt was issued, where that date differs from the date of the donation (Regulation 3501(1)(f))
- The Organization's name and address in Canada as recorded with CRA (Regulation 3501(1)(a)). This is applicable to duplicate copies retained as well as those issued to donors.

Of the three sample copies of donation receipts issued, each identified a different name for the Organization:

Receipt # 4387: Name of the organization stated as "Kneset Bnei Hagola – OHR LE NEFESH"

Receipt # 4661: Name of the organization stated as "Kneset Bnei Hagola"

Receipt # 4721: Name of the organization stated as "Canadian Friends of Kneset Bnei Hagola"

ii) Summary listing

The Organization provided a summary listing of all donation receipts issued in the audit period as requested; however, the sequential ordering of the receipt numbers was found to include many unreconciled gaps. The Organization is required to ensure that it maintains a donation receipt summary listing which allows for complete reconciliation by serial number in sequential order to support the completeness and accuracy of Line 4500 amounts reported.

Summary

As a result of the concerns identified above, it is our position that the Organization has issued receipts otherwise than in accordance with the Act. Under paragraph 168(1)(d) of the Act, the

¹⁶ 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.

Minister may, by registered mail, give notice to an Organization that the Minister proposes to revoke its registration because the Organization issued a receipt for a gift otherwise than in accordance with the Act and the Regulations or that contains false information.

7. Failure to file an Information Return as and when required by the Act

Subsection 149.1(14) of the Act states that:

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

It is the responsibility of the Organization to ensure that the information provided in its Form T3010, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.¹⁷

Audit Findings

Errors and omissions identified in the course of the audit are summarized as follows:

i) Section C2: Program information

The Organization has consistently reported its only active program as follows: “to provide scholarships and assistance to students attending Knesset Bnei schools and institutions”. The statement inaccurately reflects the nature of scholar stipend distributions and fails to include descriptions of additional activities carried out (including personal loans and therapy services).

ii) Schedule 3: Compensation

The Organization reported nil values in Schedule 3 (specifically Line 390) and Schedule 6, Detailed financial information (specifically Line 4880) to reflect compensation expenses applicable. Note: scholar stipends (honorariums) are not applicable to Line 4910 classification as scholarships. Review of the Organization’s registered payroll account confirmed total T4A income reporting slip issuances in the audit period in the amount of \$86,909.00.

iii) Schedule 6: Detailed financial information

Line 4500 tax-receipted gifts

The amount reported of \$149,378.00 could not be reconciled to the recalculated total of

¹⁷ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

\$161,073.90, per the Organization's summary listing.

Line 4575 non tax-receipted revenue from sources outside Canada

The Organization provided a summary listing of the amount originally reported on Line 4575 of \$74,957.00. The total was comprised of amounts recorded in US currency totalling \$65,040.00, with no documentation or description provided to support the currency exchange rate applied.

The listed amounts were found to be comprised almost entirely of amounts received from other registered charitable organizations (applicable to Line 4510), and a donation for which a tax receipt was confirmed as issued in the amount of \$25,000.00. The donation receipt summary listing confirmed the \$25,000.00 amount received from a donor and recognized via donation receipt 4655 was included in both Line 4500 as well as Line 4575. The amount was identified as stated in US currency in the Line 4575 reconciliation listing; however, a matching, unconverted total of \$25,00.00 was stated in the donation receipt listing. The observed discrepancies raised additional concerns relating to the accuracy of the Line 4500 amount reported.

Line 4920 Other expenses

The Organization consolidated several expense categorizations on Line 4920 which were applicable to other reporting fields in Schedule 6, including office expenses (Line 4840), occupancy costs (Line 4850) and purchased supplies (Line 4891).

Line 5000 - 5050 allocations

The Organization failed to include expenditure allocations on Line 5000 and 5010 as required. The books and records provided were not found to include a proper or substantiated allocation methodology of expenditures related to charitable programs, and expenditures related to management and administration.

As described in publication T4033, Completing the registered charity information return, a charity must assign expenditures incurred in a fiscal period between the applicable categorizations identified on Line 5000 - 5050 of Form T3010.

iv) Form T1235 Director's Worksheet

The Organization provided a completed Form T1235 in the audit period listing two directors: Sidney Aisenstark, Secretary-Treasurer, and Avraham Glustein, Vice-President. The form was found to be incomplete as phone number information was omitted for both listed representatives and the date of birth was omitted for Avraham Glustein. Of greater concern, however, was the conflicting indications of non-arm's length relationships reported, that is, Sidney Aisenstark was reported as at arm's length with other representative(s), while Avraham Glustein was reported as being not at non-arm's length). Based upon a board composition of two individuals, the reported arm's length status of the directors is not possible. If additional directors are applicable to the Organization's board of governance, disclosure is required in Form T1235.

v) Form T1236 Qualified Donees Worksheet / Amounts Provided to Other Organizations
The Organization provided a completed Form T1235 in the audit period listing applicable organizations it distributed its charitable resources to. The form was found to be incomplete as the registered names for all listed organizations did not match those recorded with the CRA (example: Zichron Moshe Synagogue described as Congregation Zichrom Moshe, Kollel Kesar Torah described as Keter Tora), and the location of Canadian Council for Israel was not provided. Further, the Organization included Vaad Mishmeres Mitzvos as a qualified donee; however, that organization (previously registered under number 890618796 RR 0001) was revoked effective January 7, 2017, and is no longer an eligible recipient.

Summary

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return as and when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

8. Charitable Designation

The Organization was re-registered with the Charities Directorate effective June 18, 1994, as a Charitable Organization. In accordance with subsection 149.1(1) of the Act, the designation of a charity as a charitable organization, a public foundation or a private foundation is dependent upon factors including the structure of its board, the sources of funding as well as the general mode of operations. The following descriptions are summarized to clarify the distinction between a “charitable organization” and “private foundation”:

Charitable organization

- is established as a corporation, a trust, or under a constitution;
- has exclusively charitable purposes;
- primarily carries on its own charitable activities, but may also gift funds to other qualified donees, (e.g., registered charities);
- more than 50% of its governing officials must be at arm's length with each other;
- generally receives its funding from a variety of arm's length donors; and
- its income cannot be used for the personal benefit of any of its members, shareholders, or governing officials.

Private foundation

- is established as a corporation or a trust;
- has exclusively charitable purposes;
- carries on its own activities and/or funds other qualified donees;

- may have 50% or more of its governing officials not be at arm's length with each other;
- generally receives the majority of its funding from a donor or group of donors that are not at arm's length; and
- its income cannot be used for the personal benefit of any of its members, shareholders, or governing officials.

As described above in Section 7, Failure to file an Information Return as and when required by the Act, above, the non-arm's length relationships of the two directors listed in Form T1235, as well as the inability to meet the "more than 50%" criteria with less than three applicable directors, resulted in a defacto designation of Private Foundation through the audit period.

In order to achieve compliance with the provisions of subsection 149.1(1) of the Act, the Organization is required to submit a request for re-designation via Form T2095, Application for Re-designation, from a charitable organization to a private foundation. Alternatively, the Organization may restructure its governance to ensure the board of directors consists of greater than 50% operating at arm's length. In accordance with the Organization's by-laws, four officer positions are described in the board composition (president, vice-president, secretary and treasurer).

The term "at arm's length" describes a relationship where persons act independently of each other or who are not related. The term "not at arm's length" means persons acting in concert without separate interests or who are related.

The Organization's options:

a) Respond

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

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

b) Do not respond

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

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

If you have any questions, please contact the undersigned at the telephone number listed below. Thank you for your assistance during the audit.

Sincerely,

A large black rectangular redaction box covering a signature.

Ted Dubien
Assisted Compliance Section
Charities Directorate, Canada Revenue Agency
320 Queen Street, Tower A, Place de Ville
Ottawa ON K1A 0L5
Telephone: (613) 305-0442
Facsimile: (613) 541-7161

Enclosure

- Compliance agreement (signed March 3, 2016) applicable to CRA audit of fiscal periods ending December 31, 2013 and 2014.

c.c.: Avraham Glustein, Vice-President

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 (y) of the definition “qualified donee” in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

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

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

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

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

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

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

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

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

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

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

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

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

A - B

where

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

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

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

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

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

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

188 (1.2) Winding-up period

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

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

188 (1.3) Eligible donee

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

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

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

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

188 (3) Transfer of property tax

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

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

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

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

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

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

188 (5) Definitions – In this section,

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

$$\mathbf{A - B}$$

where

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

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

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

$$\mathbf{A - B}$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

189 (6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

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

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

189 (6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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