November 10, 2022

REGISTERED MAIL

[redacted]

BN: 84504 4296 RR0001
File #: 3039368

Dear [redacted]

Subject: Notice of intention to revoke
Priority Foundation

We are writing with respect to our letter dated September 9, 2021 (copy enclosed), in which Priority Foundation (the Organization) was invited to respond to the findings of the audit conducted by the CRA for the period from August 1, 2014, to July 31, 2017. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have received and reviewed the Organization's December 22, 2021, and February 23, 2022, representations. Having considered the Organization's submissions, 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. The audit determined that the Organization is not complying with the requirements set out in the Act. In particular, the Organization misspent $1.1 million during the period under audit, in that it:

- failed to devote resources to a charitable purpose;
- made disbursements by way of gift to non-qualified donees;
- delivered non-incidental private benefits to non-qualified donees; and
- failed to file an information return as and when required by the Act and/or its Regulations.

Our concerns are fully detailed in Appendix A, attached. Consequently, for the reasons articulated in Appendix A, and pursuant to subsections 149.1(3) and 168(1) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b) and 168(1)(c), and subsection 149.1(3) 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**
845044296RR0001	Priority Foundation Vancouver BC

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 OE9

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

c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (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 September 9, 2021
- Organization's representations dated December 22, 2021, and February 23, 2022
- Appendix A: Comments on representations
- Appendix B: Relevant provisions of the Act

APPENDIX A

Priority Foundation

Comments on the Organization's Representations dated December 22, 2021, and February 23, 2022

As outlined in our letter of September 9, 2021, the audit conducted by the CRA identified that the Organization:

1. Failed to devote resources to a charitable purpose:
   a) Delivered non-incidental private benefits:
      - Non-charitable gifts made to non-qualified donees
   b) Conferred an undue benefit on a person
2. Failed to meet disbursement quota
3. Failed to file an information return as and when required by the Act and/or its Regulations

We have reviewed the Organization's December 22, 2021, and February 23, 2022, submissions and it remains our position that the majority of the non-compliance issues identified during our audit – with the exception of our concerns regarding the Organization's disbursement quota, as detailed in Section 2, below – represent a serious breach of the requirements of the Income Tax Act. The Organization has continued to put forward an interpretation of the facts surrounding its transactions with non-qualified donees that is fundamentally at odds with the CRA's interpretation and application of the Act. As such, it remains our opinion that the Organization's registration as a charity should be revoked.

Below please find:

i. A summary of the issues raised by the CRA in our previous letter dated September 9, 2021;
ii. A summary of responses provided by the Organization in its representations dated December 22, 2021, and February 23, 2022; and
iii. The CRA's conclusion with respect to each issue.

1. Failed to devote resources to a charitable purpose

At the time of the audit, a registered charity could only use its resources for charitable activities undertaken by the charity itself or by making gifts to "qualified donees." A registered charity was not permitted to simply contribute to, or act as a financial conduit for, the programs of an organization that is not a qualified donee.

Qualified donees are entities that are permitted to issue official donation receipts for Canadian income tax purposes, and are comprised of the following, as defined in subsection 149.1(1) of the Act:

- a registered charity (including a registered national arts service organization);[1]
- a registered Canadian amateur athletic association;
- a listed housing corporation resident in Canada which is constituted exclusively to provide low-cost housing for the aged;
- a listed Canadian municipality;
- 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.

a) Delivered non-incidental private benefits:

A registered charity must be established and operated for the sole purpose of delivering a charitable benefit to the public or a sufficient segment thereof. The public benefit requirement prevents a charity from conferring an unacceptable private benefit in the course of pursuing its charitable purposes.

- Non-charitable gifts made to non-qualified donees

Paragraph 149.1(3)(b.1) of the Act grants the Minister the authority to revoke the registration of a public foundation if it makes a disbursement by way of a gift, other than a gift made:

- in the course of charitable activities carried on by it, or
- to a donee that is a qualified donee at the time of the gift.

b) Conferred an undue benefit on a person

Pursuant to subsection 149.1(1) of the Act, as a public foundation no part of the Organization's income can be payable to, or otherwise made available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof." Any portion of a public foundation's income that is received by such a person would be considered an unacceptable private benefit.

[1] Defined in subsection 248[1] of the Act as a charitable organization, a private foundation or public foundation that is resident in Canada and was either created or established in Canada that has applied to the Minister of National Revenue in prescribed form for registration and that is at that time registered as a charitable organization, a private foundation or a public foundation.

The Organization's response:

In its March 12, 2019, representations, the Organization included Directors Meeting Minutes, dated August 15, 2015, in which its Board of Directors stated their wish to "...support the programs of select 501(c)(3)s to benefit the general public in ways the law regards as charitable."

The Organization confirmed in its December 22, 2021, representations that the lengthy arguments in previous correspondence concerning the lack of either an agency agreement or other structured arrangement between it and the various United States-based 501(c)(3) entities it has provided funds to were unfounded because there was nothing in the audit to support that the Organization was doing anything other than making gifts to those 501(c)(3) entities, which it contends are registered charities. The Organization questioned the CRA's motives for such arguments:

> "(...) we would hope that the CRA is not trying to fabricate an alternate ground for revocation so that the Court can revoke based on activities rather than having to make a decision on the Treaty as it did in the PTAQ[2] case. The facts of the audit make it clear there is no merit for a revocation based upon subsections 149.1(3) and 168(1)(b)."

The Organization further stated that "(...) the Prescient Foundation case made it clear that a Canadian foundation making a gift to a 501(c)(3) organization was a charitable purpose at common law...", and that there was no merit to the CRA's claim that the Organization conferred non-incidental benefits. It is the Organization's position that the only issue of significance with respect to the CRA's review of its books and records is the interpretation of paragraph 7, Article XXI, of the Canada-United States Income Tax Convention [1980] (the Treaty).

The Organization identifies itself as a Canadian resident, as per its interpretation of paragraph 7, Article XXI of the Treaty, which states that:

> "[f]or the purposes of Canadian taxation, gifts by a resident of Canada to an organization that is a resident of the United States, that is generally exempt from United States tax and that could qualify in Canada as a registered charity if it were a resident of Canada and created or established in Canada, shall be treated as gifts to a registered charity; however, no relief from taxation shall be available in any taxation year with respect to such gifts (other than such gifts to a college or university at which the resident or a member of the resident's family is or was enrolled) to the extent that such relief would exceed the amount of relief that would be available under the Income Tax Act if the only income of the resident for that year were the resident's income arising in the United States."

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[2] Public Television Association of Quebec v. Canada (National Revenue), 2015 FCA 170.

In its most recent representation, the Organization expressed its disagreement with the CRA's reference to paragraph three of the Federal Court of Appeal's decision in Public Television Association of Quebec v. Canada (National Revenue), 2015 FCA 170 [PTAQ],[3] made in support of the argument in the CRA's September 9, 2021, letter, namely that paragraph 7, Article XXI, of the Treaty, "...does not mean that a U.S. charity that has been designated as 501(c)(3) organization is also a "qualified donee" for the purposes of the Act." The Organization explained its disagreement as follows:

- paragraph 3 of the PTAQ decision, the Federal Court of Appeal (FCA) states that it is the Minister's interpretation of paragraph 7, Article XXI, of the Treaty, which was the second ground for the appeal. At paragraph four of that decision, the FCA stated that it would not be necessary to address the second ground.

- the PTAQ decision is the second occasion on which the FCA refrained from deciding whether the Minister was correct in her interpretation of paragraph 7, Article XXI, of the Treaty. The Organization also referred to the FCA decision in Prescient Foundation v. Canada (National Revenue), 2013 FCA 12 [Prescient], where, at paragraph 13, the Organization notes that neither the FCA, nor the Tax Court of Canada, showed any deference to the CRA's or the Minister's interpretation of the Income Tax Act. The Organization also notes that at paragraph 14 of the Prescient decision, the FCA states that the case involved extricable questions of law which needed to be reviewed, such as whether a charitable gift to a non-qualified donee is legal valid ground to revoke a registration.

The Organization is also of the opinion that the CRA has demonstrated a lack of fairness by further referring, in its September 9, 2021, letter, to Interpretation Ruling 2010-0380811E5 – Donation to a U.S. Charity (as that ruling predates the FCA decisions in PTAQ and Prescient), while remaining silent on those decisions. Further, the Organization asserts that:

> "(...) paragraph 7 of the Treaty uses the term 'registered charity' to refer equally to a 'qualified donee' and a 501(c)(3) organization. It is indisputable that the Act makes 'registered charity' the first category of what the statute calls a 'qualified donee' so in some regard it is a red herring to stake the Minister's interpretation on the position that the Treaty merely makes a 501(c)(3) organization a 'registered charity' rather than a 'qualified donee'."

While the Organization recognizes that the Treaty is focused primarily on tax relief, it is of the opinion that the CRA "...makes a fundamental mistake in statutory interpretation when it ignores the construct of Paragraph 7," in that the Organization takes the position that only the opening part of paragraph 7, as stated below, is applicable:

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[3] See paragraph three, Public Television Association of Quebec v. Canada (National Revenue), 2015 FCA 170.

> "For the purposes of Canadian taxation, gifts by a resident of Canada to an organization that is a resident of the United States, that is generally exempt from United States tax and that could qualify in Canada as a registered charity if it were a resident of Canada and created or established in Canada, shall be treated as gifts to a registered charity."

It is the Organization's position that only this portion of paragraph 7 applies, as it is not seeking tax relief. Consequently, it takes the position that the second part of paragraph 7, detailed below, applies only to entities seeking tax relief:

> "...however, no relief from taxation shall be available in any taxation year with respect to such gifts..."

The Organization also takes the position that it need not concern itself with the second part of paragraph 7 because,

> "...it rests its statutory right to make a gift to a 501(c)(3) organization in the opening part of the sentence which precedes the semi-colon. The proper interpretation of the grammatical use of the term 'however,' supports that there is a larger group of Canadian residents seeking to make gifts to 501(c)(3) organizations than those donors who are seeking tax relief."

In its February 23, 2022, representations, the Organization attached a copy of a letter from the then-Revenue Canada Customs, Excise, and Taxation Division, dated December 22, 1994, the content of which it claims supports its interpretation of the relevant Treaty provisions. The Organization specifically points to the following sentence, on page two of that letter, which states:

> "[i]n our view, the effect of paragraph 6 of Article 21 the Convention is that qualifying gifts to U.S. charities, within the limits provided in that paragraph, will be treated as if they were made to a registered charity in Canada. This provision does not, however, deem a U.S. charity to be a Canadian registered for purposes under the Act, which purposes include the definition of 'qualified donee'. It merely treats a gift to a U.S. charity as a gift to a Canadian registered charity."

Finally, with respect to the CRA's use of the term 'undue benefits', as per subsection 188.1(5) of the Act, the Organization takes the position that the CRA has displayed:

> "...a flagrant disregard for the rule of law when it applies a common law definition instead of Parliament's statutory definition. Presumably, the reason the CRA has threatened a penalty under subsection 188.1(4) is so that the issue as to the interpretation and application of Paragraph 7 of the Treaty will be heard by the Tax Court of Canada rather than the FCA. Having failed twice to get the FCA to adopt its interpretation of Paragraph 7, CRA seems to be framing the issue in a way which will cause it to be heard by the Tax Court of Canada in the hope that it will receive a more favourable determination in a different court."

The CRA's conclusion:

The Organization was registered by the CRA on August 26, 2008, as a public foundation. The purposes for which it was registered, as stated in its Letters Patent, issued under the provisions of the Canada Corporations Act[4] on August 6, 2008, are:

a) Solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees" under the provisions of the Income Tax Act; and

b) To undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

In previous correspondence, the CRA included arguments regarding agency agreements as a means of articulating that there may have been a misunderstanding with respect to the Organization's purposes and activities, as some registered charities amend their governing documents without advising the CRA of potentially relevant changes. In this regard, the CRA was providing the Organization with the benefit of the doubt by suggesting the Organization had potentially been engaged in activities beyond simply making unrestricted gifts to U.S.-based non-qualified donees, as such issues could have been addressed by entering into some form of structured arrangement with the U.S.-based entities to ensure the Organization maintained adequate and proper direction and control over its resources.

The CRA acknowledges that in its decisions in PTAQ and Prescient, the FCA made no ruling on the issues related to paragraph 7, Article XXI, of the Treaty. The reference to Interpretation Ruling 2010-0380811E5 – Donation to a U.S. Charity, in our September 9, 2021, letter, noted that a Canadian resident may only claim gifts made to U.S. 501(c)(3) entities in situations where the Canadian resident has U.S. source income and is entitled to claim tax relief against that income, as per the provisions of the Treaty. As stated in our previous correspondence,

> "[g]enerally, a corporation may claim a deduction for the eligible amount of such gifts up to 75 per cent of its income from U.S. sources. The CRA accepts that any organization that is exempt under section 501(c)(3) of the U.S. Internal Revenue Code will qualify for the purposes of paragraph 7 of Article XXI of the Treaty. Therefore, if an organization is exempt under section 501(c)(3) of the U.S. Internal Revenue Code, a Canadian resident may claim a deduction for the eligible amount of a gift to that organization, not to exceed 75 per cent of their income from U.S. sources, for the purpose of reducing their tax liability in Canada with respect to that income."

[4] Since October 1, 2014: Canada Not-for-Profit Corporations Act.

It remains the CRA's position, as expressed above, that a Canadian resident lacking income from U.S. sources is not permitted to claim gifts made to U.S.-based 501(c)(3) entities for tax relief purposes against their non-U.S. source income. While the Organization is a Canadian resident, and may have income from U.S. sources, as it is not seeking any form of tax relief against that income, paragraph 7, Article XXI of the Treaty does not apply to it.

It also remains the CRA's position, as communicated in our September 9, 2021, letter, that paragraph 7, Article XXI, of the Treaty does not operate to render a U.S. 501(c)(3) entity a "qualified donee" under the Act for the purposes of allowing a Canadian registered charity to make a disbursement by way of gift to such an entity.[5] This position is further supported by the position taken by the Customs, Excise and Taxation Division – of what was then Revenue Canada – in its December 22, 1994, letter, which the Organization provided to the CRA on February 23, 2022. Specifically, that letter concludes:

> "[i]n our view, the effect of paragraph 6 of Article 21 of the Convention is that qualifying gifts to U.S. charities, within the limits provided in that paragraph, will be treated as if they were made to a registered charity in Canada. This provision does not, however, deem a U.S. charity to be a Canadian registered charity for purposes of the Act, which purposes include the definition of "qualified donee". It merely treats a gift to a U.S. charity as a gift to a Canadian registered charity.
>
> In our opinion, a U.S. charity would only qualify as a "qualified donee" for a particular taxpayer if Her Majesty in right of Canada had made a gift to it with the particular taxpayer's taxation year or the 12 months immediately preceding that taxation year."

Further, while the CRA recognizes the FCA decision in Prescient conceded that making gifts to a foreign charity was a charitable purpose under the common law, paragraph 28 of that decision clearly articulates that gifts to foreign charities would only be acceptable "...until such time as contemplated legislative amendments were adopted prohibiting such disbursements." Shortly after the decision in Prescient, amendments to the Act prohibiting gifts to foreign charities – which had been passed, but at the time the Prescient case was heard had not yet received Royal

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[5] With respect to the Organization's contention that the terms 'registered charity' and 'qualified donee' are interchangeable, we note that a qualified donee, as defined in the Act, includes a registered charity, which is itself defined in subsection 248(1) of the Act as "...a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada." Consequently, by definition, a U.S.-based 501(c)(3) organization cannot be a registered charity under the Act as such an entity is not resident in Canada, nor was it created or established in Canada.

For greater clarity, it is the CRA's position that the term 'registered charity' in the Treaty refers to any U.S.-based 501(c)(3) organization that is tax exempt in the U.S. and that could qualify in Canada as a registered charity if it was a resident of Canada and was created or established in Canada. Consequently, while U.S.-based 501(c)(3) organizations may be tax-exempt in the U.S., they are not considered registered charities under the Act, as they are not resident in Canada, nor were they created or established in Canada; nor does the Treaty deem such entities to be registered charities or qualified donees under the Act for the purposes of allowing a Canadian registered charity to make a disbursement by way of gift to such an entity.

Assent, and can therefore reasonably be assumed to be the contemplated legislated amendments referenced by the court – came into force. These amendments gave the Minister the authority to revoke the registration of a charitable organization, a public foundation or a private foundation which, after December 20, 2002, has made a gift to a foreign non-qualified donee.

Our September 9, 2021, correspondence noted that the Act permitted a registered charity to carry out its charitable purposes both inside and outside Canada in only two ways: it can make gifts to other organizations that are on the list of qualified donees set out in the Act, and/or it can carry on its own charitable activities.[6] In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying out its own activities requires the charity to be an active and controlling participant in a program or project that directly achieves a charitable purpose.

In both its March 12, 2019, and December 22, 2021, representations, the Organization confirmed that it did not maintain any oversight of, and thus lacked direction and control over, the resources it made available to U.S.-based 501(c)(3) entities, and by extension provided an undue private benefit to those entities. The CRA fundamentally disagrees with the Organization's opinion, which is based on the Organization's interpretation of paragraph 7, Article XXI, of the Treaty, that there is no merit for revocation of its registration as a charity under the Act, based upon subsections 149.1(3) and 168(1)(b) of the Act. The concerns expressed in the CRA's September 9, 2021, letter, regarding the Organization's failure to comply with the requirements of the Act have not been alleviated, as the Organization, by its own admission, made unrestricted gifts to non-qualified donees in contravention of subsection 149.1(3) of the Act.

Consequently, it remains the CRA's position that the Organization is not operating exclusively for charitable purposes, and no longer meets the definition of a charitable foundation.[7] Further, as it no longer meets the definition of a charitable foundation, it no longer meets the definition of a public foundation.[8] As a result, the CRA hereby intends to revoke the registration of the Organization as per the provisions of paragraphs 149.1(3)(b.1) and 168(1)(b) of the Act, as it is the CRA's position that the degree of non-compliance warrants revocation as opposed to the application of financial penalties under subsection 188.1(4) of the Act.

2. Failed to meet disbursement quota

Subsection 149.1(1) of the Act describes the disbursement quota, a minimum spending requirement for registered Canadian charitable organizations. The disbursement quota is calculated at a rate of 3.5% of a registered charity's property **not** used directly in charitable activities or administration.

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[6] Note, while the Act has since been amended to allow registered charities to make qualifying disbursements, or grants, to entities that are not qualified donees, during the fiscal periods under audit, the only permissible ways for the Organization to operate were to conduct its own activities or make gifts to qualified donees.

[7] The definition of "charitable foundation" is provided in subsection 149.1(1) of the Act.

[8] The definition of "public foundation" is provided in subsection 149.1(1) of the Act.

The disbursement quota is calculated based upon an average of the value of applicable property maintained during the 24 months before the beginning of the fiscal period and 24 months before the end of the fiscal period (i.e. amounts reported on Line 5900 and 5910 of the Form T3010, Registered Charity Information Return).[9]

The Organization's response:

In its March 12, 2019, representations, the Organization stated that in order to address the identified shortfalls in its 2016 and 2017 fiscal periods, it had disbursed $35,750 to qualified donees within Canada during its fiscal period ended July 31, 2018.

The CRA's conclusion:

According to the Form T1236, Qualified Donees Worksheet / Amounts Provided to other Organizations, submitted by the Organization for the fiscal period ending July 31, 2018, it made $35,750 in disbursements to qualified donees in Canada.

These additional disbursements suggest that the Organization may have taken steps to address the disbursement quota shortfall identified by the audit; however, the Organization continues to take the position, relying on the Prescient decision, that the resources it gifts to U.S.-based 501(c)(3) entities qualify for purposes of meeting its disbursement quota obligations. As noted above, amendments to the Act which came into force following Prescient have made such gifts grounds for revocation under paragraph 149.1(3)(b.1), and as a result such gifts cannot be included when making a determination as to whether a charitable organization, public foundation, or private foundation is meeting its disbursement quota obligations.

A recent review of the Organization's Form T3010s and Form T1236s for the fiscal periods ending July 31, 2019, and July 31, 2020 (while outside the scope of this audit), suggests that while the Organization continues to report gifts made to U.S.-based 501(c)(3) entities as gifts to qualified donees, it has made gifts to Canadian registered charities: $34,253 in its fiscal period ending July 31, 2019; and $53,009 in its fiscal period ending July 31, 2020.

The CRA acknowledges that the concerns expressed in its September 9, 2021, letter, with respect to the Organization's disbursement quota obligations, have been alleviated, and that the Organization now appears to be compliant with the disbursement quota requirements of the Act.

3. Failed to file an information return as and when required by the Act and/or its Regulations

It is the Organization's responsibility to ensure that the information provided in its Form T3010, and all associated schedules and statements, is factual and complete in every respect, and that

[9] See canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation

these forms, schedules, and statements are filed within six months from the end of each taxation year. A charity is not meeting its requirements under the Act to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization's response:

The Organization explained in its December 22, 2021, representations, that it mistakenly omitted page two of its Form T1236 for the fiscal period ending July 31, 2015, wherein it reported gifts of $23,000 to "Scripps Health", and $19,866 to "Charity: Water". The total of these two gifts account for a difference of $43,866, instead of the $83,666 discrepancy calculated by the CRA.[10]

The Organization also acknowledged clarification of its understanding between line 4510 "Total amount received from other registered charities", and line 4530 "Total other gifts received for which a tax receipt was not issued".

The Organization further acknowledged that line 5910 was not accurately completed and that the CRA missed this finding in its previous letter, but that this oversight is rectified with the $35,750 gifts made to qualified donees within Canada during its fiscal period ended July 31, 2018.

The Organization explained the reason it did not report $0 on line 5050 for all fiscal periods under audit is because the CRA-approved software system [redacted] it uses to complete the Form T3010 automatically populates line 5050 with the information contained in its Form T1236. The Organization further explained that the CRA is responsible for composing the prescribed form of the information return and detailing the prescribed information but as the Minister does not recognize 501(c)(3) organizations as qualified donees, it is a breach of fairness to propose to revoke the Organization's registration for its failure to complete an accurate return when the return is composed upon a mistaken interpretation of the law.

Finally, the Organization acknowledged that it was late in filing its Form T3010s for all fiscal periods under audit and will address this concern for future filings.

The CRA's conclusion:

The additional $43,866 reported on page two of the Organization's Form T1236 for the fiscal period ending July 31, 2015, explains the initial unreconciled amount, and as a result the $193,149 reported on line 5050 of the Form T3010 for the same fiscal period reconciles with the amount reported on the Form T1236; however, the fact remains that both Scripps Health and Charity: Water are not qualified donees, and line 5050 of Form T3010 is reserved for reporting the total of all gifts made to qualified donees.

The Organization's position with respect to the errors on its Form T3010s is based on its continued and fundamentally incorrect interpretation of paragraph 7, Article XXI, of the Treaty.

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[10] During its fiscal period ended July 31, 2015, the Organization reported $149,283 worth of gifts to qualified donees on its Form T1236, but reported $193,149 on line 5050 "Total amount of gifts made to all qualified donees" on its Form T3010. The discrepancy of $43,866 has been reconciled.

Only gifts to qualified donees, as defined by the Act – which excludes foreign entities except in limited, defined circumstances – should be listed in the Form T1236, and then reported as such on line 5050 of the Form T3010. Any amounts transferred to a non-qualified donee are to be reported on line 4920 and then further specified on line 4930.

Contrary to the Organization's assertions, the Form T3010 has not been designed or formulated based on a misinterpretation of the law. It remains the CRA's position that, as all the entities the Organization listed on its Form T1236s for the fiscal periods under audit were non-qualified donees, the amount entered on line 5050 should have been $0. While outside the audit period, the CRA conducted a cursory review of the Organization's Form T3010s and Form T1236s for the fiscal periods ending July 31, 2018, July 31, 2019, and July 31, 2020. That review indicates that the Organization has continued to improperly report gifts to non-qualified foreign entities as gifts to qualified donees on line 5050 of its Form T3010s.

As the Organization has continued to make, and improperly report, such gifts, in contravention of the Act, it is also likely that it remains non-compliant with the requirements of paragraph 168(1)(c) of the Act. Consequently, it is the CRA's position that the concerns expressed on September 9, 2021, with respect to the Organization's failure to file an information return in the prescribed form, containing the prescribed information, as required by the Act and/or its Regulations have not been alleviated, and the CRA intends to revoke the Organization's registration under paragraph 168(1)(c) of the Act.

APPENDIX B

Qualified Donees

149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

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

(ii) a municipality in Canada,

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

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

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

(b) a registered charity,

(b.1) a registered journalism organization,

(c) a registered Canadian amateur athletic association, or

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

149.1 (2) Revocation of registration of charitable organization

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

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

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

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

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

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

149.1 (3) Revocation of registration of public foundation

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

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

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

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

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

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

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

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

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

149.1 (4) Revocation of registration of private foundation

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

(a) carries on any business;

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

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

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

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

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

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

149.1 (4.1) Revocation of registration of registered charity

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

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

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

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

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

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

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

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

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

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

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

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

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

168 (2) Revocation of Registration

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

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

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

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

168 (4) Objection to proposal or designation

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

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

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

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

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

A - B

where

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

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

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

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

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

(a) a debt of the charity that is outstanding at the end of that taxation year,

(b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or

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

188 (1.2) Winding-up period

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

(a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,

(b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

(c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188 (1.3) Eligible donee

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

(a) a registered charity

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

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

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

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

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

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

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

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

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

188 (3) Transfer of property tax

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

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

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

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

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

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

188 (5) Definitions – In this section,

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

A - B

where

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

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

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

A - B

where

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

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

189 (6) Taxpayer to file return and pay tax

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

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189 (6.1) Revoked charity to file returns

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

(a) file with the Minister

> (i) a return for the taxation year, in prescribed form and containing prescribed information, and
>
> (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

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

(a) the amount, if any, by which

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

exceeds

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

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

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

189 (6.3) Reduction of liability for penalties

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

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

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

189 (7) Minister may assess

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

[redacted]

[redacted]

February 23, 2022

Charities Directorate
Canada Revenue Agency
Place de Ville, Tower A
320 Queen Street, 2nd Floor
Ottawa ON K1A 0L5

RECEIVED/REÇU

[redacted]

CISD

Attention: Tanya Barbeau

Dear Ms. Barbeau

Re: PRIORITY FOUNDATION BN 84504 4296 RR0001 (the "Organization")

This letter is written to follow-up to our December 22, 2021 response to your letter ("Priority AFL") dated September 9, 2021. We wonder when we might receive a response to our submissions.

You are aware that the proper interpretation of Article XXI of the Canada-US Tax Convention ("the Treaty") as it pertains to registered Canadian charities making gifts to US charities is an issue which has been outstanding for decades. Enclosed please find a copy of letter written to the writer on the topic by Roberta Albert back in 1994 after an in-person meeting.

The letter documents that almost three decades ago Rulings Directorate accepted that Article XXI "merely treats a gift to a U.S. charity as a gift to a Canadian registered charity". That is exactly the interpretation taken by the Foundation. The Foundation simply asks that CRA "merely treat a gift to a U.S. charity as a gift to a Canadian registered charity",

The term "qualified donee" never once appears in Article XXI. Consequently, it is not defensible for CRA to insert the term and make it the defining reason to propose revoking the Foundation's registration. The intellectual dishonesty of this approach is evidenced by the fact that CRA does not substitute "qualified donee" for "registered charity" in multiple other provisions in the *Income Tax Act* such as the interpretation of "designated gift" and "disbursement quota" which use the term "registered charity" in their definitions.

The "qualified donee" issue is a red herring introduced by CRA. Even if it were not, a "registered charity" is undoubtedly included in the definition of "qualified donee".

Yours sincerely,

[redacted]

Encl.

Revenue Canada
Customs, Excise and Taxation

Revenu Canada
Accise, Douanes et Impôt

COPY

Your file Votre référence

Our file Notre référence

5-942808
C.Chouinard

[redacted]

Attention: [redacted]

December 22, 1994

Dear Sir:

Re: Article 21 of the Canada/U.S. Tax Convention and Qualified Donees

We are writing further to our meeting (Albert/[redacted]/Chouinard/Juneau) of November 1, 1994 and in reply to your letter of October 28, 1994, wherein you requested our comments regarding the effect of paragraph 6 of Article 21 of the Canada/U.S. Income Tax Convention (the "Convention") as regards U.S. charities.

More specifically, you inquire whether a U.S. charity will qualify as a "qualified donee", within the meaning of subsection 149.1(1) of the *Income Tax Act* (the "Act"), in light of paragraph 6 of Article 21 of the Convention.

Our Comments

A "qualified donee" is defined in subsection 149.1(1) as "a donee described in any of paragraphs 110.1(1)(a) and (b) and the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1)". *Inter alia*, this definition includes a registered charity, which for purposes of the Act, is defined under subsection 248(1) of the Act, as:

(a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada, or

(b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph (a), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf,

..../cont'd

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25 Nicholas Street
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that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation.

The definition also includes a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during a particular taxpayer's taxation year or the 12 months immediately preceding the taxation year.

Paragraph 6 of Article 21 of the Convention states that "For purposes of Canadian taxation, gifts by a resident of Canada to an organization which is resident in the United States, which is generally exempt from United States tax and which could qualify in Canada to receive deductible gifts if it were created or established and resident in Canada shall be treated as gifts to a registered charity".

In our view, the effect of paragraph 6 of Article 21 of the Convention is that qualifying gifts to U.S. charities, within the limits provided in that paragraph, will be treated as if they were made to a registered charity in Canada. This provision does not, however, deem a U.S. charity to be a Canadian registered charity for purposes of the Act, which purposes include the definition of "qualified donee". It merely treats a gift to a U.S. charity as a gift to a Canadian registered charity.

In our opinion, a U.S. charity would only qualify as a "qualified donee" for a particular taxpayer if Her Majesty in right of Canada had made a gift to it within the particular taxpayer's taxation year or the 12 months immediately preceding that taxation year.

We trust that these comments will be of assistance.

Yours truly,

[redacted]

R.A. Albert
for Director
Business and General Division
Rulings Directorate
Policy and Legislation Branch

[redacted]

[redacted]

[redacted]

December 22, 2021

Charities Directorate
Canada Revenue Agency
Place de Ville, Tower A
320 Queen Street, 2nd Floor
Ottawa ON K1A 0L5

Attention: Tanya Barbeau

Dear Ms. Barbeau

Re: PRIORITY FOUNDATION BN 84504 4296 RR0001 (the "Organization")

This letter is written in response to your letter ("Priority AFL") dated September 9, 2021.

INTRODUCTION

We trust that you will agree that the audit findings set out in the Priority AFL identify one area of non-compliance that clearly merits further discussions and consideration, namely, Issue #1 - "Failure to devote resources to a charitable purpose". More specifically, this is the matter of interpretation of the Canada-US Tax Convention ("the Treaty") as it pertains to registered Canadian charities making gifts to US charities, hereafter referred to as 501(c)(3)s. We trust you will agree that the other areas on non-compliance (Items 2 and 3) are minor and somewhat immaterial to this audit. As we believe these minor concerns can be or have already been resolved to the satisfaction of all parties with the information you have provided to the Organization to date on these issues along with the information provided herein. If the Minister determines that it is necessary to continue to include Issues 2 and 3 in this audit process, we respectfully suggest that this would unnecessarily draw attention away from the substantive matter at hand – the Treaty and whether it enables a registered charity to make gifts to US registered charities. To be clear, we are very interested in working with Charities Directorate to settle the matter of the Treaty with respect to registered Charities as we feel it is important to the sector and believe it is good public policy to have clarity on how the Treaty impacts registered Canadian charities. We are therefore prepared to take this matter before the Federal Court of Appeal and it would be best for all parties to have the Treaty question be the only question of law brought before the courts. Alternatively, in the event that the information provided below regarding the Treaty satisfies your concerns, we would ask that the audit be closed with no further compliance action or, if you feel it appropriate, with a Compliance Agreement or education letter on the matters of Item 2 and 3.

ISSUE #1 – FAILED TO DEVOTE RESOURCES TO A CHARITABLE PURPOSE

Your letter opens with CRA stating its position that "[a]s a registered charity, the Organization must comply with the law". We respond by stating our position that "as the regulator of charities, Charities Directorate must comply with the law". Accordingly, we provide our response with the expectation of full and open discussions on the matters at hand and with the anticipation that we will work together to address your concerns which have arisen from this audit.

[redacted]

[redacted]

Paragraph 7 of the Treaty

The only issue of significance, in our view, is whether Charities Directorate is correct as a "question of law" in its interpretation of paragraph 7[1] ("Paragraph 7") of Article XXI of the Canada – US Tax Convention. In the portion of the Priority AFL with the heading "The CRA Position" CRA accepts that Paragraph 7 is an applicable provision of the law of Canada binding upon CRA.

Further, "CRA accepts that any organization that is exempt under section 501 (c)(3) of the U.S. Internal Revenue Code will qualify for the purposes of paragraph 7 of Article XXI of the Treaty". There is no dispute that the organizations to which Priority Foundation made gifts are organizations exempt under section 501 (c)(3) of the U.S. Internal Revenue Code.
More importantly, CRA accepts that

> "if an organization is exempt under section 501 (c)(3) of the U.S. Internal Revenue Code, a **Canadian resident** may claim a deduction for the eligible amount of a gift to that organization, not to exceed 75 per cent of their income from U.S. sources, for the purpose of reducing their tax liability in Canada with respect to that income".

Unless CRA can deny that Priority Foundation is "a Canadian resident", CRA has conceded in the Priority AFL that Paragraph 7 applies to Priority Foundation. The wording of Article XXI in multiple paragraphs make it clear that it includes incorporated organizations. The Priority AFL makes not the slightest effort to refute that Priority Foundation is a qualifying Canadian resident and can seek to bring itself under this provision.

The CRA Position goes on to state:

> "This recognition does not mean that a U.S. charity that has been designated as 501 (c)(3) organization is also a "qualified donee" for the purposes of the Act. [15] It is our position that paragraph 7 of Article XXI of the Treaty does not operate to render a U.S. 501 (c)(3) entity a "qualified donee" under the Act for the purposes of allowing a Canadian registered charity to make disbursements by way of gift to a U.S. 501 (c)(3) organization."

The Priority AFL is less than intellectually honest when it cites as the authority for this position paragraph 3 of *Public Television Association of Quebec v. Canada (National Revenue)*, 2015 FCA 170 (*PTAQ*). In paragraph 3 the Court merely states the Minister's position on paragraph 7 of the Treaty as the second ground for the appeal. In the following paragraph the Court goes on to explicitly state that it is not necessary for the Court to deal with the second ground advanced by the Minister. The Priority AFL fails to meet the requisite grounds of fairness to a registered charity when the Minister misrepresents the law in this way.

CRA's lack of fairness is even more egregious because the *PTAQ* case is the second occasion on which the Federal Court of Appeal has refrained from deciding whether the Minister is correct in her interpretation of Paragraph 7 of the Treaty. In paragraph 14 of *Prescient Foundation and Minister of National Revenue*, 2013 FCA 120 ("*Prescient*

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[1] *7. For the purposes of Canadian taxation, gifts by a resident of Canada to an organization that is a resident of the United States, that is generally exempt from United States tax and that could qualify in Canada as a registered charity if it were a resident of Canada and created or established in Canada, shall be treated as gifts to a registered charity; however, no relief from taxation shall be available in any taxation year with respect to such gifts (other than such gifts to a college or university at which the resident or a member of the resident's family is or was enrolled) to the extent that such relief would exceed the amount of relief that would be available under the Income Tax Act if the only income of the resident for that year were the resident's income arising in the United States. The preceding sentence shall not be interpreted to allow in any taxation year relief from taxation for gifts to registered charities in excess of the amount of relief allowed under the percentage limitations of the laws of Canada in respect of relief for gifts to registered charities.*

Foundation") the Federal Court of Appeal held:

> "There are extricable questions of law raised by the appellant in this case which must be reviewed on a standard of correctness, including, notably, whether a charitable gift to a non-qualified donee is a valid legal ground to revoke a registration."

In the previous paragraph the Court held

> "Parliament has not provided for deference to the Minister on questions of law in the context of an appeal under paragraph 172(3)(*a.1*) of the Act... I add to this discussion that, in the normal course of litigation involving the Act, no deference is showed by the Tax Court of Canada, or this Court, to the CRA's or the Minister's interpretation of the Act, and I see no reason why this approach should be different when dealing with appeals under paragraph 172(3)."

Consequently, as a matter of law it is very clear that the Court have as much respect for the position taken on the interpretation of Paragraph 7 of the Treaty by Priority Foundation as they do the position of the Minister. It is a breach of the standard of fairness to which Priority Foundation is entitled for the Priority AFL to reference CRA Interpretation Ruling 2010-03808 (which predates both of these Federal Court of Appeal unanimous decisions) and be silent on (or misrepresent) the decisions of the Court.

The CRA Position makes it clear that a Canadian resident may claim a deduction for the eligible amount of a gift to a 501 (c)(3) organization, not to exceed 75 per cent of their income from U.S. sources, for the purpose of reducing their tax liability in Canada with respect to that income. As a matter of law and according to the wording of the Act, the tax benefit for charitable donations is only available to a Canadian resident who has made a gift to a "qualified donee". The definition of "charitable gift" in subsection 110.1(1) as well as the definition of "total charitable gifts" in subsection 118.1(1) only provide for tax benefits if the gift is to a "qualified donee". The tax benefit accruing to a Canadian resident donor to a 501 (c)(3) organization set out in The CRA Position is only possible under the provisions in the Act if the recipient 501 (c)(3) organization is treated as a "qualified donee".

It is also significant that Paragraph 7 uses the term "registered charity" to refer equally to a "qualified donee" and a 501 (c)(3) organization. It is indisputable that the Act makes "registered charity" the first category of what the statute calls a "qualified donee" so in some regard it is a red herring to stake the Minister's interpretation on the position that the Treaty merely makes a 501 (c)(3) organization a "registered charity" rather than a "qualified donee". Note the final sentence which states:

> The preceding sentence shall not be interpreted to allow in any taxation year relief from taxation for gifts to registered charities **[501 (c)(3) organizations]** in excess of the amount of relief allowed under the percentage limitations of the laws of Canada in respect of relief for gifts to registered charities **["qualified donees"]**.

CRA's Interpretation Rulings as well as its guidance posted on its website focuses exclusively on the tax relief provided by Paragraph 7. The CRA Position does the same when it begins:

> The Canada — U.S. Tax Convention (the Treaty) provides limited tax relief with respect to gifts made by Canadian residents to U.S. organizations.

While this is undoubtedly correct, the CRA makes a fundamental mistake in statutory interpretation when it ignores the construct of Paragraph 7. It opens with the words "For the purposes of Canadian taxation" and sets out that gifts by a resident of Canada to a 501 (c)(3) organization shall be treated as gifts to a registered charity. This is as far into Paragraph 7 that Priority Foundation needs to read because it is merely a resident of Canada seeking to make a gift

[redacted]

[redacted]

to a registered charity. It is not seeking tax relief. Those who are seeking tax relief must read further because the sentence continues **however, no relief from taxation shall be available...** Priority Foundation need not concern itself with CRA's interpretation with the latter part of that sentence because it rests its statutory right to make a gift to a 501 (c)(3) organization in the opening part of the sentence which precedes the semi-colon. The proper interpretation of the grammatical use of the term "however," supports that there is a larger group of Canadian residents seeking to make gifts to a 501 (c)(3) organization than those donors who are seeking tax relief.

FAILED TO DEVOTE RESOURCES TO A CHARITABLE PURPOSE

The Priority AFL goes on for four pages about agency agreements and carrying on its own activities. There is absolutely nothing in the audit which supports any intention of Priority Foundation doing anything other than makings gifts to registered charities. As set out earlier in this letter, we would hope that CRA is not trying to fabricate an alternate ground for revocation so that the Court can revoke based upon activities rather than having to make a decision on the Treaty as it did in the *PTAQ* case. The facts of the audit make it clear there is no merit for a revocation based upon subsections 149.1(3) and 168(1)(b).

It is troubling from a fairness perspective that CRA as the regulator of Priority Foundation would go on at such length about there being no charitable purpose when the Federal Court of Appeal in *Prescient Foundation* case made it clear that a Canadian foundation making a gift to a 501 (c)(3) organization was a charitable purpose at common law.

PRIVATE BENEFIT

Similarly, the holding of the Federal Court of Appeal in *Prescient Foundation* on a gift to a 501 (c)(3) organization makes it clear that there is no merit to the Priority AFL's allegations that Priority Foundation conferred non-incidental private benefits.

PARAGRAPH 149.1(3)(b.1)

The Priority AFL's reliance upon this paragraph supports Priority Foundation's claim that the only issue of significance is the interpretation of Paragraph 7 of the Treaty.

UNDUE BENEFIT

The Priority AFL converts the meaning of "undue benefit" into a question of law when it states:

> "Typically, private benefits that are unacceptable under the common law will also be "undue" benefits under subsection 188.1 (5) of the Act".

Parliament enacted a significantly complex definition of "undue benefits" in subsection 188. I (5) of the Act, CRA displays a flagrant disregard for the rule of law when it applies a common law definition instead of Parliament's statutory definition. Presumably, the reason CRA has threatened a penalty under subsection 188. I (4) is so that the issue as to the interpretation and application of Paragraph 7 of the Treaty will be heard by the Tax Court of Canada rather than the Federal Court of Appeal. Having twice failed to get the Federal Court of Appeal to adopt its interpretation of Paragraph 7, CRA seems to be framing the issue in a way which will cause it to be heard by the Tax Court of Canada in the hope that it will receive a more favourable determination in a different court.

[redacted]

[redacted]

FAILURE TO MEET ITS DISBURSEMENT QUOTA

The Federal Court of Appeal in *Prescient Foundation* made it clear that the Priority AFL is mistaken when it states that gifts to a 501 (c)(3) organization are "not expenditures in furtherance of the Organization's purposes". However, the Organization was concerned that an auditor may not consider that these gifts satisfy its disbursement obligations set out in Section 149.1(3) of the Act. Accordingly, during its 2018 fiscal year, it gifted a total of $35,750 to six Canadian registered charities in a express effort to comply with the law with regard to its 2018 disbursement quota. It then applied the disbursement excess to fully satisfy its 2016 and 2017 shortfalls. The audit period did not include the 2018 fiscal year and therefore this information was not readily available to you at the time of the audit. The 2018 T3010 on file with CRA provides the details of these gifts. However, please advise if you would prefer to have the Organization provide you with a copy of the 2018 T1236. We trust this further information satisfies your concerns regarding this area of non-compliance you have identified.

The Priority AFL letter also notes that the Organization reported the total amounts disbursed to 501 (c) (3)s on Line 5050 of its T3010 Return and you advise that line 5050 for the Organization's 2015, 2016 and 2017 T3010 Returns "should have reported as $0". Our response to this statement is that the Organization uses a CRA approved software program – [redacted] which automatically populates Line 5050 with the information from Form T1236. Consequently, the Organization completed its T3010 Returns and related T1236 forms as best as it was able to do within the confines of this software program and the form of the T3010 and T1236.

While the Organization acknowledges that public foundations making gifts to 501(c)(3)s is not common, we believe the T1236 form provides for the reporting of these gifts. You will know that the Organization completed the T1236 by listing all the charities which received funding and noted the locations of these charities. You will also note that at the top of the T1236 form – the title is 'Completing the Qualified donees worksheet/**Amount provided to other organizations**' (emphasis added). The next line states "registered charities can make gifts to qualified donees. Enter the required information for gifts made to each qualified donee **or other organization** (emphasis added). Page 2 of the form is titled "Completing the Qualified donees worksheets/Amounts provided to other organizations" and provides detailed instruction which the Organization relied upon to complete its T1236 correctly. The instructions include 'List the name of **each organization** (emphasis added) that received a gift from the charity. You will note that the instructions do not state 'List the name of each Qualified donee'. Further, the instructions provide that the Organization must give the recipient organization's complete business number (BN) **if it has one** (emphasis added). Next, the instructions state that to complete the required information regarding the location of the recipient charity, "If the organization is outside the country, enter its full mailing address, including the country". Finally, the instructions regarding Total amount of gifts states "enter the total amount of all gifts, including non-cash gifts) given to the organization. Amounts must be in Canadian dollars." Again, these instructions use the term 'organization' not 'qualified donee' which we believe is material.

The fact that Line 5050 of the T3010 form arbitrarily shortens the description of the information provided in Form T1236 from 'Completing the Qualified donees worksheet/**Amount provided to other organizations**' to "Total amounts of gifts made to qualified donees" is an issue for the regulator to address. Certainly, we have struggled with this 'disconnect' in terms of how to complete both the T1236 and the T3010 regarding gifts to 501(c)(3)s. Please advise if we should over-ride the software and input the total gifts to 501 (c)(3)s in some other location on the T3010 and the Organization will do so in future filings and would also file T1240s as appropriate for the audit period, if so instructed. To be clear, we believe it is important to provide as much information as possible on the recipient charities by way of the T1236and we believe we have completed the T1236 correctly and pursuant to the instructions on the Form.

[redacted]

[redacted]

In any event, CRA is responsible for composing the prescribed form of the information return and detailing the prescribed information[2] which every registered charity must file with the Minister. It is clear that the Minister does not believe that a 501 (c)(3) organization is a qualified donee so it is understandable that the Minister would compose a T3010 which is consistent with her belief. However, it is a breach of fairness to propose to revoke the registration of Priority Foundation for its failure to accurately complete a public information return which was composed upon a mistaken interpretation of the law.

FAILURE TO FILE AN INFORMATION RETURN

The Priority AFL also stated that the organization "did not accurately complete its information returns for fiscal periods under audit, in that items reported were incorrectly identified". We have already set out our reasons for filing the T3010s with the amounts on Line 5050. You have noted that during its fiscal period ended July 31 2015, the Organization reported $149,283 on its Form T1236 but reported $193,159 on line 5050. Importantly, you advised that 'The discrepancy of $83,866 remains unreconciled". First, the discrepancy is $43,866 NOT $83,866. Apparently, we all make minor mistakes which leads us to the next comment. The Organization filed its 2015 T3010 and Schedules including the T1236. However, the second page of the T1236, which was omitted by mistake, contained the information regarding a gift of $24,000 to Scripps Health and a gift of $19,866 to Charity: Water. The total of these two gifts accounts for the difference of $43,866. We were not aware of this omission until we just recently reviewed our PDF of the as-filed T3010 and Schedules. Further, in response to your statement that "this discrepancy remains unreconciled", we ask that you re-check your records because we provided you with a full accounting of the disbursements totalling $193,149 as an attachment to our letter of March 12, 2019 addressed to the attention of Ibrahim Kanore. Consequently, we trust the information provided in March 2019 and in this letter, fully addresses your concerns on this matter. Please advise if you wish to have us provide you with a copy of page 2 of the T1236 Schedule to the 2015 T3010.

You have also stated that "During the fiscal period ended July 31, 2015, the Organization reported $653,475 on line 4510 "Total amounts received from other registered charities" was incorrect. We were unaware that we were to separate out gifts the Organization received as a Qualified donee and gifts received as an Eligible donee. We will not make this mistake in future and thank you for advising us of this.

We trust you would agree that these non-compliance issues have been addressed by way of the Priority AFL and that CRA Charities Directorate has fulfilled its mandate to assist charities by providing education letters, information on its web-site and hosting road shows.

The audit also found that the Organization did not accurately complete line 5900 on its 2017 T3010. To be fair, the Priority AFL should also have stated that the Organization did not accurately complete line 5910. Consequently, Line 5900 was under-reported as you have noted but Line 5910 was over-reported. Your records will show that the 2017 T3010 incorrectly provided the same information as was reported on the previous year's T3010 for lines 5900 and 5910. This error, in our view, does not warrant anything more than has already been provided to the Organization. We confirm that the 2018 T3010 was filed with the correct information on lines 5900 and 5910 and that the Organization has met its disbursement quota requirements based on the correct calculation of the average fair market

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[2] *Subsection 149.1 (14) 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.*

[redacted]

[redacted]

value of property not used directly in charitable activities or administration during the 24 months before the end of the fiscal period.

Finally, the Priority AFL reported the during all fiscal periods under audit, the Organization failed to file its Form T3010 within six months of its fiscal year end as required by section 149.1(14) of the Income Tax Act. We note that the 2015 T3010 was filed 10 days late while the 2016 and 2017 were filed 36 and 29 days late respectfully. While this is certainly filing late, we would suggest that these late fillings are not serious in nature and would best be addressed by way of an education letter or Compliance Agreement. In any event, the Organization will address this concern in future filings.

CONCLUSION

We trust you are satisfied with the information provided regarding the non-compliance areas Items 2 and 3, namely "Failing to meet disbursement quota" and "Failed to file an information return as and when required by the Act and/or its Regulations" respectively'. In this response, we have acknowledged our mistakes with respect to these two areas on concerns, provided information for clarification and suggested that a reasonable compliance action to address these areas of non-compliance is either no further compliance action or a Compliance Agreement or education letter. Certainly, revocation of charitable status for these areas on non-compliance would seem extraordinarily harsh.

Further, we trust you will agree that the Organization made every attempt to properly report its gifts to 501(c)(3)s, which it believes is in compliance with the law, using a Charities Directorate reporting environment which denies a charity the ability to properly report these gifts as the forms seem to be based on a flawed interpretation of the US-Canada Tax Treaty.

In closing, as set out in our introduction, we trust you will agree that the interpretation of the US –Canada Tax Treaty as it relates to registered Canadian charities is the matter of alleged non-compliance that needs to be fully addressed in the audit process through to a satisfactory conclusion. Accordingly, we look forward to working with you to complete this audit and bring clarity and transparency regarding the interpretation of the US Canada Tax Treaty as it relates to registered Canadian charities. Priority sincerely believes that CRAs position on this matter needs to be clarified either through the conclusion of this audit or by the courts for the good of the charitable sector and all its stakeholders- including Charities Directorate.

If you require anything further at this time, please contact the writer.

Yours sincerely,

[redacted]

September 9, 2021

Mikael Bingham
Authorized representative
[redacted]
203-815 Hornby Street
Vancouver BC V6Z 2E6

BN: 84504 4296 RR0001
File #: 3039368

Dear Mikael Bingham:

Subject: Audit of Priority Foundation

This letter results from the audit of Priority Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period of August 1, 2014, to July 31, 2017.

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

AREAS OF NON-COMPLIANCE		
	Issue	**Reference**
1.	Failed to devote resources to a charitable purpose: a) Delivered non-incidental private benefits: i) Non-charitable gifts made to non-qualified donees b) Conferred an undue benefit on a person	149.1(3), 168(1)(b), 188.1(4), 188.1(5)
2.	Failed to meet disbursement quota	149.1(3)(b), 168(1)(b)
3.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(3), 149.1(14), 168(1)(c)

As a registered charity, the Organization must comply with the law. If it fails to comply with the law, it may either be subject to sanctions under section 188.1[1] of the Act, and/or have its registered status (as a charity) revoked in the manner described in section 168 of the Act.

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to provide representations to our findings.

[1] Financial sanctions are assessed under Section 188.1 of the Act.

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

Background

The Organization was registered by the CRA on August 26, 2008, as a public foundation. The purposes for which it was registered are the following, as listed in its Letters Patent, issued under the provisions of the Canada Corporations Act on August 6, 2008:[2]

a) Solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees" under the provisions of the Income Tax Act; and

b) To undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

This audit is the Organization's first audit since its registration.

Identified areas of non-compliance

1. Failed to devote resources to a charitable purpose

A registered charity may only use its resources for charitable activities undertaken by the charity or for gifting to "qualified donees."[3] If unable to carry out its own activities through its staff, a charity typically uses an intermediary. An intermediary is an individual or non-qualified donee that the charity works with to carry out its own activities. The intermediary usually has resources that a charity needs, such as particular skills, resources, knowledge of a region, or specialized equipment. If a charity chooses to conduct its own activities through an intermediary it must still direct and control the use of its resources. A registered charity cannot merely contribute to, or act as a financial conduit for, the programs of another organization.

Though made in reference to an intermediary relationship, the underlying principles enunciated by the Federal Court of Appeal in Canadian Committee for the Tel Aviv Foundation v Canada[4] are applicable to most intermediary arrangements:

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[2] Since October 1, 2014: Canada Not-for-profit Corporations Act.
[3] A "qualified donee" means a donee described in subsection 149.1(1) of the Act. As the Act specifically states what constitutes a qualified donee, entities not expressly included in the definition are not considered qualified donees.
[4] 2002 FCA 72, [2002] FCJ no 315.

> 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 intermediary. However, it cannot merely be a conduit to funnel donations overseas. (para 30)
>
> and
>
> Pursuant to subsection 149.1(1) of the [*Income Tax 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 intermediary, the charity must be prepared to satisfy the Minister that it is at all times both in control of the intermediary, and in a position to report on the intermediary's activities. (para 40)

As re-iterated by the Court in Lepletot v Minister of National Revenue,[5] 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.

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 also 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.

If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.[6]

When a charity transfers funds, property, or resources to contractors, intermediaries or partners who carry out its activities abroad, these arrangements can be an acceptable devotion of the charity's resources to its "own activities" providing:

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[5] 2006 FCA 128.

[6] For more information, see Guidance CG-002, Canadian Registered Charities Carrying Out Activities Outside Canada, and Guidance CG-004, Using an Intermediary to Carry Out Activities Within Canada.

- the charity has obtained reasonable assurance before entering into agreements with individuals or other organizations that they are able to deliver the services required by the charity (by virtue of their reputation, expertise, etc.);

- all expenditures will further the Canadian Charity's formal purposes and constitute charitable activities that the Canadian Charity carries on itself;

- the charity regularly monitors the progress of the project or program through adequate reports and records of expenditures received from the other party;

- where appropriate, the charity makes periodic payments on the basis of this monitoring (as opposed to a single lump sum payment) and maintains the right to discontinue payments at any time if it is not satisfied.

- an adequate agreement is in place such as a written agreement. Although there is no legal requirement to have a written agreement, and the same result might be achieved by other means, a properly executed written agreement is an effective way to help meet the own activities test.

Although entering into a written agreement can be an effective way to help meet the own activities test, it is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,[7] and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

Charities should be mindful that their relationship with their intermediaries is not only judged on how well their agreements are written but, more importantly, on their ability to show that they direct and control the use of their resources through active, ongoing, sustained relationships. The basic elements of a written agreement include:

- the exact legal names and physical addresses of all parties;
- a clear, complete, and detailed description of the activities to be carried out by the intermediary, and an explanation of how the activities further the charity's purposes;
- the location(s) where the activity will be carried on (for example - physical address, town or city);
- all time frames and deadlines;
- any provision for regular written financial and progress reports to prove the receipt and disbursement of funds, as well as the progress of the activity;

[7] See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] FCJ no 315.

- a statement of the right to inspect the activity, and the related books and records, on reasonably short notice;
- a provision for funding in installments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources if required (funding includes the transfers of all resources);
- a provision for issuing ongoing instructions as required;
- for agency agreements, provision for the charity's funds to be segregated from those of the intermediary, as well as for the intermediary to keep separate books and records;
- a clause to the effect that if any of the charity's funds or property are to be used in the acquisition, construction, or improvement of immovable property, the title of the property will vest in the name of the charity. If not, there will be provision showing how legal title to that property is held by a qualified donee;
- for joint ventures, there must be provisions that enable the charity to be an active partner, with a proportionate degree of direction and control in the venture as a whole, as well as assurances of the following:
    - the charity's resources are devoted to activities that further its purposes; and
    - the charity maintains and receives financial statements and records for the entire project on a regular basis;
- the effective date and termination provisions; and
- the signature of all parties, and the date.

Delivery of non-incidental private benefits

A registered charity must be established and operated for the sole purpose of delivering a charitable benefit to the public or a sufficient segment thereof. The public benefit requirement prevents a charity from conferring an unacceptable private benefit in the course of pursuing charitable purposes.

At common law, a private benefit[8] means a benefit provided to a person or organization that is not a charitable beneficiary, or a charitable beneficiary where a benefit goes beyond what is considered to be charitable. Private benefits can be conferred on a charity's staff, directors, trustees, members, and/or volunteers while they are carrying out activities that support the charity, or to third parties who provide the charity with goods or services. Where it can be fairly considered that the eligibility of a recipient relates solely to the relationship of the recipient to an organization, any resulting benefit will not be acceptable. Providing a private benefit is unacceptable unless it is incidental to accomplishing a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit.[9]

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[8] For more information, see CRA Guidance product CG-019: How to draft purposes for charitable registration. Note that the terms "Personal benefit" and "Private benefit" are interchangeable.

[9] For more information, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

Necessary means legitimately and justifiably resulting from:

- an action taken to achieve a charitable purpose;
- a necessary step, a consequence, or a by-product of an action taken to achieve a charitable purpose; or
- the operation of a related business as defined in paragraph 149.1(1) of the Act.

Reasonable means related to the charitable need and no more than is needed to achieve the purpose, and fairly and rationally assessed and distributed.

Proportionate means the private benefit cannot be a substantial part of a purpose or activity, or be a non-charitable end in itself. The private benefit must be secondary and the public benefit must be predominant and more significant.

Additionally, the public benefit cannot be too speculative, indirect or remote, as compared to a more direct private benefit, particularly when a direct benefit is to private persons, entities, or businesses.

Examples of unacceptable (not incidental) private benefit might include:

- paying excessive salaries/remuneration;
- paying for expenses, or providing benefits that are not justified or needed to perform required duties;
- providing excessive per diems;
- unjustified/unnecessary or excessive payments for services, facilities, supplies, or equipment; or
- promoting the work, talent, services, or businesses of certain persons or entities, without justification.

Pursuant to subsection 149.1(1) of the Act, as a public foundation no part of the Organization's income can be payable to, or otherwise made available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof." Any portion of a public foundation's income that is received by such a person would be an unacceptable private benefit.

➢ Audit Findings

The audit found that the during the fiscal periods ending July 31, 2015, July 31, 2016, and July 31, 2017, the Organization made gifts to several non-qualified donees.[10] The Organization was unable to provide any supporting documentation to demonstrate that the funds transferred to these non-qualified donees were disbursed as part of the Organization's own charitable activities.

[10] Details in this regard are provided below in the section of the letter entitled "Non-charitable gifts to non-qualified donees".

Non-charitable gifts made to non-qualified donees

Paragraph 149.1(3)(b.1) of the Act grants the Minister the authority to revoke the registration of a public foundation if it makes a disbursement by way of a gift, other than a gift made:

- in the course of charitable activities carried on by it, or
- to a donee that is a qualified donee at the time of the gift.

It is our position that by paying amounts in such a manner as described below, the Organization made disbursements by way of gift to non-qualified donees. Further, these gifts were not made in the course of a charitable activity, nor were they made in pursuit of a charitable purpose. As a result, it is our position that there may be grounds for revocation of the Organization's charitable registration under paragraph 149.1(3)(b.1) of the Act.

➢ Audit Findings

The Organization reported at line 5050, Total amount of gifts to all qualified donees, of its Form T3010s, Registered Charity Information Return, that it had, during the fiscal periods under audit, disbursed funds totaling $1,118,268 to qualified donees as defined by the Act. However, the audit found that recipients of these disbursements were not qualified donees under the Act. A detailed list of the gifts made to non-qualified donees, during each of the three fiscal periods under audit, is provided below:

Fiscal period ended July 31, 2015

1)	Presbyterian Free Church	$ 31,183
2)	International Health Partners	21,000
3)	American Endowment Foundation	84,520
4)	Mt Hermon Christian Conference Centre	500
5)	A Broader View Volunteers	4,850
6)	Charity Water	19,866
7)	Scripps Health	24,000
8)	Reducetarian Foundation	7,230
	Total	$ 193,149

Fiscal period ended July 31, 2016

1)	Foundation for Cancer Care in Tanzania	$ 200
2)	Reducetarian Foundation Inc	18,600
3)	Smile Train	5,422
4)	Charity Water	17,734
5)	International Association for Suicide Prevention	1,350
6)	Comfort Aid International	322,875
	Total	**$ 366,181**

Fiscal period ended July 31, 2017

1)	Sojourners – EIN[11] 23-7380554	$ 4,872
2)	Metta Forest Monastery EIN95-9291604	2,880
3)	Comfort Aid International EIN 84-1667485	527,926
4)	Tibetan Nuns Project EIN 68-0327175	23,260
	Total	**$ 558,938**

At Item 3 of our letter dated January 15, 2019, we requested documentary evidence to support the Organization's claim that the $1,118,268 had been disbursed to qualified donees. In that letter, we noted the Organization appeared to have "(...) been gifting funds to organizations that are not considered qualified donees as defined in the Income Tax Act," and requested the following:

a) Detailed information and documentation regarding the Organization's precise roles and responsibilities in each of the activities it has funded, over and above the transferring of funds;
b) Detailed information and documentation regarding the non-qualified donees' precise roles and responsibilities while representing the Organization in each of the activities funded by the Organization;
c) Detailed information and documentation to demonstrate the Organization maintains direction and control over the funds, as well as the activities, for which it has gifted to non-qualified donees;
d) Signed/dated copies of formal written agreements between the Organization and the non-qualified donees, if any;
e) Copies of the Organization's written record (minutes) for all fiscal periods under audit;
f) Copies of the Organization's accounting working papers; and
g) Any other information and documentation to explain the gifts to non-qualified donees.

[11] Employer Identification Number assigned by the Internal Revenue Services.

The Organization's Response

In response, the Organization provided representations dated March 26, 2019, wherein it stated that the transactions were permitted by virtue of paragraph 7[12] of Article XXI of The Canada-United States Income Tax Convention (1980) (the Treaty).

This provision of the Treaty states that:

> For the purposes of Canadian taxation, gifts by a resident of Canada to an organization that is a resident of the United States, that is generally exempt from United States tax and that could qualify in Canada as a registered charity if it were a resident of Canada and created or established in Canada, shall be treated as gifts to a registered charity; however, no relief from taxation shall be available in any taxation year with respect to such gifts (other than such gifts to a college or university at which the resident or a member of the resident's family is or was enrolled) to the extent that such relief would exceed the amount of relief that would be available under the Income Tax Act if the only income of the resident for that year were the resident's income arising in the United States.
>
> The preceding sentence shall not be interpreted to allow in any taxation year relief from taxation for gifts to registered charities in excess of the amount of relief allowed under the percentage limitations of the laws of Canada in respect of relief for gifts to registered charities.

The Organization's representations specifically state that "The Organization understands Article XXI s.5 of the Canada – US Tax Convention to mean that its gifts to organizations registered under s.501(c)(3) of Title 26 of the United States Code are to be 'treated as gifts to a registered charity'."

Concerning requested items a) to d) above, the Organization responded that it "(...) restricts its activities to its legal purposes, which include 'disbursing funds and property exclusively to registered charities and "qualified donees" under the provisions of the Income Tax Act.'"

It also stated that it "...understands the seriousness of its responsibility to comply with the requirements of the Income Tax Act for its registration," and that it had "...no direction, control, role or responsibilities regarding activities of registered charities and qualified donees funded by the Organization 'over and above the transferring of funds.'"

Concerning e) and f) above, we reviewed the Organization's accounting working papers (General Ledger Reports) and meeting minutes and both documents indicate that the Organization continues to disburse funds to non-qualified donees.

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[12] In your letter you cited section 5 of Article XXI of the Treaty, however, according to the consolidated version of the Treaty, this section has been renamed and renumbered paragraph 7 (of Article XXI).

Concerning e) above, the Organization submitted minutes for the following meetings: Aug 15, 2015, Aug 15, 2016, Mar 13, 2017, and Aug 15, 2017.

Concerning g) above, the Organization explained that CRA policy guidance CG-010, Qualified donees, is "(...) incomplete in that it does not address the incorporation of provisions of the Canada – US Tax Convention into the interpretation of the Income Tax Act."[13]

The CRA's Position

The Canada – U.S. Tax Convention (the Treaty) provides limited tax relief with respect to gifts made by Canadian residents to U.S. organizations. Pursuant to paragraph 7 of Article XXI of the Treaty, gifts made by a resident of Canada to an organization that is resident in the U.S. that is generally exempt from U.S. tax, and that could qualify in Canada as a registered charity if it were created or established and resident in Canada, will be treated as gifts to a registered charity for the purposes of reducing the donor's tax liability in Canada with respect to their income from U.S. sources.[14]

Generally, a corporation may claim a deduction for the eligible amount of such gifts up to 75 per cent of its income from U.S. sources. The CRA accepts that any organization that is exempt under section 501(c)(3) of the U.S. Internal Revenue Code will qualify for the purposes of paragraph 7 of Article XXI of the Treaty. Therefore, if an organization is exempt under section 501(c)(3) of the U.S. Internal Revenue Code, a Canadian resident may claim a deduction for the eligible amount of a gift to that organization, not to exceed 75 per cent of their income from U.S. sources, for the purpose of reducing their tax liability in Canada with respect to that income.

This recognition does not mean that a U.S. charity that has been designated as 501(c)(3) organization is also a "qualified donee" for the purposes of the Act.[15] It is our position that paragraph 7 of Article XXI of the Treaty does not operate to render a U.S. 501(c)(3) entity a "qualified donee" under the Act for the purposes of allowing a Canadian registered charity to make disbursements by way of gift to a U.S. 501(c)(3) organization.

A qualified donee as defined in subsection 149.1(1) of the Act includes a registered charity which is defined in subsection 248(1) as a charitable organization, a private foundation or public foundation that is resident in Canada and was either created or established in Canada that has applied to the Minister of National Revenue in prescribed form for registration and that is at that time registered as a charitable organization, a private foundation or a public foundation. A qualified donee also includes a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift in the year or in the 12 months immediately preceding that year.

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[13] The list of QDs in CG-010, Qualified donees, and the list of QDs defined in subsection 149.1(1). Qualified donees are one and the same. In our letter, we referred to both (page 2).
[14] See CRA Interpretation Ruling 2010-0380811E5-Donation to a U.S. Charity.
[15] See Public Television Association of Quebec v. Canada (National Revenue), 2015 FCA 170 at Para 3.

According to our list of foreign charities that have received a gift from Her Majesty in right of Canada,[16] none of the 501(c)(3) organizations listed in the Organization's representations or in its Form T1236, Qualified donees worksheet / Amounts provided to other organizations, are qualified donees. Therefore, we have concluded that during the fiscal periods under audit when gifting funds to these organizations, the Organization made disbursements by way of gift to non-qualified donees.

The Organization's explanations concerning the information and documentation requested in our January 15, 2019, letter, confirm the Organization did not make gifts to qualified donees, and that the Organization has acted as a conduit during the fiscal periods ended under audit. A conduit is a charity that funnels its resources to a non-qualified donee without direction or control. Acting as a conduit contravenes the Act, and could jeopardize a charity's registration.

A charitable activity is one that directly furthers a charitable purpose – which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits public foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(3)(b.1) provides that a public foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.[17]

Conferred an undue benefit on a person

As explained earlier in this letter, pursuant to subsection 149.1(1) of the Act, as a public foundation no part of the Organization's income can be payable to, or otherwise made available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof." Any portion of a public foundation's income that is received by such a person would be an unacceptable private benefit.

Typically, private benefits that are unacceptable under the common law will also be "undue" benefits under subsection 188.1(5) of the Act. An undue benefit[18] means a benefit provided by a registered charity, a registered Canadian amateur athletic association (RCAAA), or a third party at the direction, or with the consent, of a charity or RCAAA that would otherwise have had a right to that amount.

An undue benefit includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity or RCAAA that is paid, payable, assigned or otherwise made available for the personal benefit of any person who:

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[16] See **canada.ca/en/revenue-agency/services/charities-giving/other-organizations-that-issue-donation-receipts-qualified-donees/other-qualified-donees-listings/list-foreign-charities-that-have-received-a-gift-majesty-right-canada**

[17] This provision is retroactive to December 20, 2002, and covers the period under audit. See **fin.gc.ca/drleg-apl/nwmm-amvm-1012n-05-eng.asp**, Clause 308.

[18] Undue Benefit penalties are assessed under subsection 188.1(4) of the Act.

- is a proprietor, member, shareholder, trustee or settlor of the charity or RCAAA;
- has contributed or otherwise paid into the charity or RCAAA more than 50% of the capital of the charity or RCAAA; or
- does not deal at arm's length with a person in (a) or (b), or with the charity or RCAAA.

Conversely, an undue benefit does not include:

a) reasonable consideration or remuneration for property acquired or services received by the charity or RCAAA;
b) a gift made, or a benefit conferred, in the course of a charitable act[19] in the ordinary course of the charitable activities carried on by the charity unless it can be reasonably considered that the beneficiary was eligible for the benefit solely due to the relationship of the beneficiary to the charity; or
c) a gift to a qualified donee;

As outlined above, the audit found that the Organization made gifts to several non-qualified donees during the fiscal periods ended July 31, 2015, 2016, and 2017. In total, the Organization gifted $1,118,268 ($193,149 + $366,181 + $558,938, respectively) to non-qualified donees during the three fiscal periods under audit. As explained below, it is our view that these gifts constitute undue benefits.

We consider all of the gifts made during the fiscal periods under audit to be undue benefits for the following reasons:

- each of the disbursements was by way of gift;
- none of the amounts were paid as reasonable consideration or remunerations for property acquired or services received;
- none of the amounts were paid in the ordinary course of the charitable activities carried on by the Organization[20]; and
- none of the amounts were gifts made to qualified donees,

Penalty Proposed

A registered charity that confers an undue benefit is liable to pay a penalty equal to 105% of the amount of the benefit conferred. It is our view, based on our analysis above, that a penalty under the provisions of subsection 188.1(4) of the Act should be levied against the Organization for conferring an undue benefit by making disbursements by way of gift to non-qualified donees.[21] Please review the table on the following page for details regarding the calculation of the undue benefit penalty in each of the three fiscal periods under audit.

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[19] While charitable act is not defined in the Act, it is considered to refer to an activity that itself provides a charitable benefit to an eligible beneficiary.
[20] The Organization confirmed that it had no direction and control over how the non-qualified donees used the funds they received as gifts from the Organization. Meaning, the funds were not spent as part of the Organization's own charitable activities.
[21] See paragraph 188.1(4)(a) of the Act.

Priority Foundation				
Fiscal Period Ending	**Type of Sanction**	**Sanction %**	**Sanctioned Amount**	**Sanction**
July 31, 2015	Undue Benefit	105%	$193,149	$202,806
July 31, 2016	Undue Benefit	105%	$366,181	$384,490
July 31, 2017	Undue Benefit	105%	$558,938	$586,885
		Total	**$1,118,268**	**$1,174,181**

The total penalty owing under the provisions of subsection 188.1(4) of the Act would be $1,174,181.00. However, 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 sections 149.1(3)(b.1) and 168(1)(b) 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.

Summary

Based on the findings of the audit, we are considering revoking and/or sanctioning the Organization for failing to devote its resources to a charitable purpose, for making gifts to non-qualified donees, and by extension, for providing an undue private benefit. It is our position that the Organization is not operating exclusively for charitable purposes, and no longer meets the definition of a charitable foundation.[22] Further, as it no longer meets the definition of a charitable foundation, it no longer meets the definition of a public foundation.[23] For this reason, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraphs 149.1(3)(b.1) and 168(1)(b) of the Act.

2. Failure to meet its disbursement quota

Subsection 149.1(1) of the Act describes the disbursement quota, a minimum spending requirement for registered Canadian charitable organizations. The disbursement quota (DQ) is calculated at a rate of 3.5% of a registered charity's property **not** used directly in charitable activities or administration.

The disbursement quota is calculated based upon an average of the value of applicable property maintained during the 24 months before the beginning of the fiscal period and 24 months before the end of the fiscal period (i.e. amounts reported on Line 5900 and 5910 of the T3010 Information Return). [24]

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[22] The definition of "charitable foundation" is provided in subsection 149.1(1) of the Act.
[23] The definition of "public foundation" is provided in subsection 149.1(1) of the Act.
[24] **See canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation**

Audit findings

As explained in the preceding section of this letter, the Organization reported the gifts it made to non-qualified donees on line 5050 of its Form T3010s; however, these amounts were not expenditures incurred in furtherance of the Organization's purposes. Therefore, the amounts of $193,149, $366,181, and $558,938, which were reported on line 5050 for the years 2015, 2016, and 2017, respectively, should have been reported as $0. As the Organization has not made gifts to qualified donees, or carried out its own activities during the audit period, we have excluded the amounts the Organization reported on line 5050 for the purposes of calculating its disbursement quota.

The audit findings indicate the Organization has a shortfall of $22,563 with respect to its disbursement quota, as summarized below:

	2015-07-31	2016-07-31	2017-07-31
Line 5900	0	228,783	228,782
DQ requirement	0	8,007	14,555
Line 5000	0	0	0
Line 5050	0	0	0
DQ shortfall	0	8,007	14,555

Total DQ shortfall: **$ 22,563** ($8,007 + $14,555)

Summary

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

It is our view that the Organization has failed to comply with the disbursement quota requirements outlined in subsection 149.1(1) of the Act, in that the resources of the Organization have not been applied, expended or utilized in a manner shown to constitute a charitable use of its resources. Further, paragraph 149.1(3)(b) of the Act provides the Minister with the authority to revoke the Organization's registration where it 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.

For this reason, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraphs 149.1(3)(b) and 168(1)(b) of the Act for its failure to meet its disbursement quota and its failure to comply with the requirements of the Act for its registration as such.

3. Failure to file an information return as and when required by the Act and/or its Regulations

Subsection 149.1(14) of the Act requires that every registered charity file an information return in the prescribed form, containing the prescribed information, without notice or demand, within six months of its fiscal year end. For a registered charity, the prescribed form and the prescribed information include:

- Form T3010, Registered Charity Information Return;
- Form TF725, Registered Charity Basic Information Sheet;
- Form T1235, Directors/Trustees and Like Officials Worksheet;
- Form T1236, Qualified donees worksheet / Amounts provided to other organizations, if applicable; and
- the financial statements.

Most of the information in a charity's information return is available to the public. The public can view a charity's contact information, general activities, and financial information, to help guide them in making informed donation decisions. As such, it is the responsibility of the charity to ensure that the information provided in its return, applicable worksheets and financial statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return if it fails to exercise due care with respect to ensuring the accuracy thereof. The information entered in returns is displayed on the CRA website for donors to see.

Audit findings

The audit found that the Organization did not accurately complete its information returns for the fiscal periods under audit, in that items reported were incorrectly identified. Specifically, as explained in the preceding section of this letter, the Organization reported at line 5050, Total amount of gifts to all qualified donees, that it had disbursed funds to qualified donees, as defined under the Act; however, the audit has determined that the recipients of these disbursements were not qualified donees under the Act.

- During its fiscal period ended July 31, 2015, the Organization reported $149,283 on its Form T1236, but reported $193,149[25] on line 5050 "Total amount of gifts made to all qualified donees" on its Form T3010, Registered Charity Information Return. The discrepancy of $83,866 remains unreconciled.

- During its fiscal period ended July 31, 2015, the Organization reported $653,475 on line 4510 "Total amount received from other registered charities" of its Form T3010. In our January 15, 2019, letter, we requested a list of all charities, including their Business Numbers (BN/Registration Numbers), from which the Organization had received gifts, along with the amounts the Organization had received from each, for all fiscal periods under audit.

[25] This amount is the true amount of gifts given to other organizations, as it was supported by the Organization's representations.

Based on our review of the entities reported in the Organization's general ledger report (provided by the Organization on March 26, 2019), the amount reported on line 4510 should have been $21,005. This amount represents gifts of $15,799.79 from the Being Grateful Foundation (BN 871308722 RR0001), and $5,205.00 from the Praxis Foundation (BN 859831638 RR0001). These two entities are the only charities currently registered with the CRA, from which the Organization received gifts.

Further, the Organization included on line 4510 amounts received from entities whose status as registered charities had already been revoked at the time the funds were transferred to the Organization.[26] The amounts transferred by these entities should have been reported on line 4530, Total other gifts received for which a tax receipt was not issued. The non-registered entities from which the Organization received gifts is detailed below:

Beneficiary	Revoked BN	Amount
Scripps International Foundation	869154583 RR0001	$ 8,484.72
Pacific Light Foundation	845363498 RR0001	$ 20,000.00
Theanon Charitable Foundation	891106841 RR0001	$ 70,000.00
Revelstoke Education Foundation	853759041 RR0001	$500,000.00
Central Fund of the Synod of the Free Church of Scotland	887330595 RR0001	$ 33,985.00

- The Organization did not accurately complete line 5900, Average value of property not used directly in charitable activities or administration during the 24 months before the **beginning** of the fiscal period.

  This line represents property such as any real estate, investments, or other assets that were **not** used directly in charitable activities or administration. This may include, for example, cash in bank accounts, inventory, stocks, bonds, mutual funds, GICs, land, and buildings.

  Based on our calculations, the Organization should have entered the amount of $415,865 on line 5900 for the period ended July 31, 2017, instead of $228,782. This means that line 5900 was under reported by $187,083.

  For the fiscal periods under audit, the Organization had assets in excess of $25,000:

Fiscal year	Line 4100 (Cash, bank accounts, and short-term investments)
2015	$457,565
2016	$374,164
2017	$374,240

[26] For more information, visit the Charities Listing on the CRA website.

- During all fiscal periods under audit, the Organization failed to file its Form T3010 within six months of its fiscal year end as required by subsection 149.1(14) of the Act. The repeat late filing observed for the fiscal periods under audit is summarized as follows:

Fiscal Period End	Due Date	Date Received
2017-07-31	2018-01-31	2018-03-01
2016-07-31	2017-01-31	2017-03-08
2015-07-31	2016-01-31	2017-02-10

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 that the Organization has failed to comply with subsection 149.1(14) of the Act by failing to file an accurate and complete Form T3010 as and when required. For this reason, there may be grounds to revoke the Organization's registered status under paragraph 168(1)(c) of the Act.

Conclusion

On the basis of our audit findings there are sufficient grounds to levy financial penalties against the Organization under subsection 188.1(4) of the Act. Further, for each of the reasons detailed above, there appear to be sufficient grounds to revoke the Organization's registration as a charity under subsections 149.1(3) and 168(1) of the Act.

However, as noted earlier, 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 subsections 149.1(3) and 168(1) 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.

The Organization's options:

a) **Respond**

Should you choose to make representations regarding these proposals, 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, we 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 provided for in section 188.1of 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, we may proceed with the application of penalties described in section 188.1 of the Act, or give notice 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.

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. For more information on how to authorize a representative, please visit our website at **https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.html**.

If you have any questions or require further information or clarification, please do not hesitate to contact me at 343-571-0694. My manager, Julie McCaffrey, may also be reached at 613-850-7091.

Yours sincerely,

[redacted]

Tanya Barbeau
Charities Directorate
Canada Revenue Agency
Place de Ville, Tower A
320 Queen Street, 2nd floor
Ottawa ON K1A 0L5

Enclosure:
- Disbursement quota calculation

cc.: Brian Smith, Director of Priority Foundation

Disbursement quota

The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees (for example, other registered charities). The disbursement quota calculation is based on the value of a charity's property not used for charitable activities or administration.

The disbursement quota is calculated as follows:

Charitable organizations

If the average value of a registered charity's property not used directly in charitable activities or administration during the 24 months before the beginning of the fiscal period exceeds $100,000, the charity's disbursement quota is:

- 3.5% of the average value of that property.

Public and private foundations

If the average value of a registered charity's property not used directly in charitable activities or administration during the 24 months before the beginning of the fiscal period exceeds $25,000, the charity's disbursement quota is:

- 3.5% of the average value of that property.

A registered charity can use **line 5900** in Schedule 6 of the T3010 return it completes for the fiscal period to calculate its disbursement quota for that period.

start line 5910

Do **not** use Line 4250 in Schedule 6 to calculate the disbursement quota.

Note
If the charity has permission to accumulate property, it must subtract the amount accumulated plus any income earned on this amount from the amount at line 5900, before multiplying by 3.5%.

To determine the amount that should be subtracted from line 5900, the charity can use the amounts entered at line 5500 minus any amounts entered at line 5510 for all the returns to date covered by the permission to accumulate property.

What is "property not used directly in charitable activities or administration"?

For the purposes of calculating the disbursement quota, property includes any real estate or investment assets that were not used directly in charitable activities or administration. This may include, for example, cash in bank accounts, stocks, bonds, mutual funds, GICs, land, and buildings.

How is the average value of property calculated?

The average value of property is based on a specified number of periods (decided by the charity) over a 24-month span. The 24-month span can be divided into two to eight equal, consecutive periods. The number of periods is usually chosen when the charity files its first information return. Once chosen, the charity must get our written permission to change it.

For example, if a charity calculates the value of its property only once a year, it will use two 12-month periods to calculate an average value. If it values its property every six months, then it will use four six-month periods to calculate an average value.

To establish the average value, first determine the value of the charity's property that is not used directly in charitable activities or administration at the end of each period within the 24-months. Then add all of the values together and divide the total by the number of periods. The result is the charity's average value of property for the purpose of calculating the disbursement quota.

Example 1

ABC is a charitable organization that has two assets: a building not used directly in charitable activities or administration, and shares in a publicly traded company. The value of the building is the fair market value of the property. The value of the shares is set by the closing price on the stock exchange for the day on which the valuation period ended.

ABC calculates the value of its property not used directly in charitable activities or administration twice a year (every six months). Therefore, it uses four periods to establish the value of its assets. For the fiscal period ending December 31, 2010, it calculates the average value as follows:

Valuation date	Value of building	Value of shares	Combined value
June 30, 2008	$500,000	$90,000	$590,000
Dec. 31, 2008	$500,000	$100,000	$600,000
June 30, 2009	$510,000	$110,000	$620,000
Dec. 31, 2009	$510,000	$120,000	$630,000

The average value of property for the 24 months before the **beginning** of the fiscal period is $610,000 ($590,000 + $600,000 + $620,000 + $630,000 = $2,440,000, divided by four valuation periods). The charity reports $610,000 at **line 5900** on the return.

ABC's disbursement quota is $21,350 (3.5% of $610,000) for the fiscal period ending December 31, 2010.

Example 2

XYZ is a private foundation. It was incorporated in 2009 and received a gift of securities. It was registered effective January 1, 2010. XYZ calculates the value of its property not used directly in charitable activities or administration at the end of each fiscal period (every 12 months). For the return for the fiscal period ending December 31, 2010, it calculates the average value as follows:

Valuation date	**Value of shares**
December 31, 2008	$0
December 31, 2009	$100,000

The average value of property for the 24 months before the **beginning** of the fiscal period is $50,000 ($0 + $100,000 = $100,000 divided by two valuation periods.) The charity reports $50,000 at **line 5900** on the return.

XYZ's disbursement quota is $1,750 (3.5% of $50,000) for the fiscal period ending December 31, 2010.

Note
A registered charity must continue to devote its resources (funds, personnel, and property) to its charitable purposes and activities even though the amount for its disbursement quota may be calculated as nil.