



REGISTERED MAIL

BN: 896208857RR0001

File #: 0649160

NOV 08 2017

**Subject: Notice of intention to revoke
The Canadian Friends of WCFE-TV 57 / Les amis Canadiens de
WCFE-TV 57**

Dear 

We are writing following our letter dated July 13, 2017 (copy enclosed), in which The Canadian Friends of WCFE-TV 57 / Les amis Canadiens de WCFE-TV 57 (Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA), and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

As of this date, we still have not received any response to our letter.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization was not constituted for charitable purposes; lacked direction and control over its purported activities; and was unable to show that it is carrying out charitable activities. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated July 13, 2017, pursuant to subsection 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), and subsection 149.1(2), {and paragraph 149.1(2)(b)}, of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by

virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

Business number
896208857RR0001

Name
The Canadian Friends of WCFE-TV57 /
Les amis Canadiens de WCFE-TV 57
Montreal PQ

Should the Organization choose to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written notice of objection, 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:

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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 90 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an objection to this notice of intention to revoke within this timeframe.

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

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax

paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at canada.ca/en/revenue-agency/services/charities-giving/charities;

- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Tony Manconi
Director General
Charities Directorate

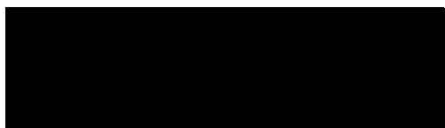
Attachments:

- CRA letter dated July 13, 2017
- Appendix A, Relevant provisions of the Act

c.c.: Harry Bloomfield
Chairman
The Canadian Friends of WCFE-TV 57
[REDACTED]



The Canadian Friends of WCFE-TV57



BN: 896208857RR0001

File #: 0649160

Attention:



July 13, 2017

Subject: Audit of The Canadian Friends of WCFE-TV 57 / Les amis Canadiens de WCFE-TV 57

Dear



This letter is further to the most recent audit of the books and records of The Canadian Friends of WCFE-TV 57 / Les amis Canadiens de WCFE-TV 57 (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from July 1, 2010 to June 30, 2011.¹

Following the CRA's initial assessment of the audit and consideration of the Organization's responses, the Organization received a Notice of Annulment dated August 20, 2015. The annulment was set aside following the order issued by the Federal Court of Appeal, dated April 21, 2017. The court order also referred the matter back to the Minister of National Revenue for redetermination. This letter presents the results of that redetermination.

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

¹ The audit encompassed an enquiry into all aspects of the Organization's operations. Activities undertaken after the audit period may have also been considered to assess ongoing and current legal compliance.

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to be constituted for exclusively charitable purposes	149.1(1), 149.1(6.2) and 168(1)(b)
2.	Failure to devote resources to charitable activities carried on by the Organization itself: a) Lack of direction and control over the use of resources/resourcing a non-qualified donee b) Conduct of non-charitable activities	149.1(1), 149.1(2), 149.1(6.2), and 168(1)(b)

This letter describes the specific identified areas of non-compliance as they relate to the legislative and common law requirements applicable to registered charities, and gives the Organization an opportunity to make additional representations or present additional information. As a registered charity, the Organization must comply with all legislative and common law requirements on an ongoing basis – if it does not, its registered status may be revoked in the manner described in section 168 of the Act. The balance of this letter describes the identified areas of non-compliance.

General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities, carried on by the organization itself, that further those purposes.² An exclusively charitable purpose must fall within one or more of the following four categories (also known as “heads”) of charity³ and deliver a public benefit:

- relief of poverty (first category);

² See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to “charitable activities carried on by the organization itself” except to the extent that an activity falls within the specific exemptions of subsections 149.1(6.1) or (6.2) of the Act relating to political activities, and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at paras 155-159 [*Vancouver Society*]. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

³ The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including “the disbursement of funds to qualified donees.” The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) [*Pemsel*]. The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, supra note 4.

- advancement of education (second category);
- advancement of religion (third category); or
- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.⁴ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.⁵ An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁶
- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
 - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or
 - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will

⁴ See generally *Vancouver Society*, supra note 4 at para 41, Gonthier J, dissenting; *Gilmour v Coats et al*, [1949] 1 All ER 848 [Gilmour]; *National Anti-Vivisection Society v IRC*, [1947] 2 All ER 217 at 224 (HL), Wright LJ [*National Anti-Vivisection Society*].

⁵ See for example *In re Grove-Grady*, [1929] 1 Ch 557 at 573-574; *Plowden v Lawrence*, [1929] 1 Ch 557 at 588, Russell LJ; *National Anti-Vivisection*, supra note 6 at 49, Wright LJ; *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539 [Oldham]; *Pemsel*, supra note 5 at 583.

⁶ See *National Anti-Vivisection Society*, supra note 6 at 49, Wright LJ; *In re Shaw decd*, [1957] 1 WLR 729; *Gilmour*, supra note 6, Simonds LJ at 446-447.

usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁷

As well, a charitable purpose⁸ should not be broad or vague. If the wording is too broad or vague, it will not be clear that a purpose is charitable (falls within a charitable purpose category and provides a public benefit) and defines the scope of the organization's activities. "Broad" means the purpose may allow for both charitable and non-charitable activities or the delivery of unacceptable private benefits, or both. "Vague" means the wording may be interpreted in different ways. A purpose that is too broad or vague may not be eligible for registration.⁹

The question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages. In *Vancouver Society of Immigrant and Visible Minority Women v MNR*, the Supreme Court of Canada stated as follows:

But the inquiry cannot stop there. In *Guaranty Trust, supra* at p.144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purpose is the Society at present instituted?"¹⁰

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. If an activity is, or becomes, a substantial focus of an organization, it may no longer be in furtherance of a stated purpose. Instead, the activity may further a separate or collateral purpose. An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

⁷ For more information about public benefit, see CRA Policy Statement, CPS-024, *Guidelines for registering a charity: meeting the public benefit test*.

⁸ For more information about charitable purposes see CRA Guidance CG-019, *How to draft purposes for charitable registration*.

⁹ *Vancouver Society*, supra note 4 per Iacobucci J at para. 158; *Travel Just v Canada Revenue Agency*, 2006 FCA 343, [2007] 1 C.T.C. 294.

¹⁰ *Vancouver Society*, supra note 4 at para 194. See also *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 42, [2007] 3 SCR 217.

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

- for its *own charitable activities* - undertaken by the charity itself under its continued supervision, direction and control¹¹; and
- for gifting to “qualified donees” as defined in the Act.¹²

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must be able to substantiate that the activity to be conducted will further its charitable purposes, and that it maintains 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.¹³

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 be 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.

One way to show that a charity that acts through an intermediary maintains proper direction and control over the activities is use of an agency agreement. The basic elements of such an agreement include the following¹⁴:

- exact legal names and physical addresses of all parties

¹¹ See, most recently, *Public Television Association of Quebec v Minister of National Revenue*, 2015 FCA 170 at paras 41 – 44.

¹² A “qualified donee” means a donee described in subsection 149.1(1) of the Act.

¹³ For more information, see CRA Guidance, CG-002, *Canadian registered charities carrying out activities outside Canada* and Guidance, CG-004, *Using an intermediary to carry out a charity's activities within Canada*.

¹⁴ This list is from Appendix C “What should a written agreement contain?” in CG-004.

- 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
- provision for regular written financial and progress reports to prove the receipt and disbursement of funds, as well as the progress of the activity
- a statement of the right to inspect the activity, and the related books and records, on reasonably short notice
- provision for funding in instalments based on satisfactory performance, and for the withdrawing or withholding of funds or other resources if required (funding includes the transfers of all resources)
- provision for issuing ongoing instructions as required
- 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
- 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, 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
 - the charity maintains and receives financial statements and records for the entire project on a regular basis
- effective date and termination provisions

- signature of all parties, and the date

However, the existence of an agreement with an intermediary, written or otherwise, is not enough to show that a charity meets the “own activities” test. A charity must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,¹⁵ and are actually implemented. Documents that show this functioning relationship include:

- a clear, complete, and detailed description of the activity that is to be conducted, how it furthers the charitable purposes of the charity and how it is to be carried out by the intermediary on the charity's behalf, including parameters, deliverables, milestones or goals;
- provisions for real and effective monitoring and supervision of the activity, and the intermediary carrying on the activity, with mechanisms for someone accountable to the charity to give instructions about, have input into, and modify the nature or scope of the activity on an on-going basis; and
- a requirement for the charity to receive regular, meaningful reports as the activity progresses. To be meaningful, reporting requirements must specify issues to be covered, and when they must be submitted, to ensure the charity has the opportunity to make significant decisions in regard to the conduct of the activity on a timely and ongoing basis.

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.

In summary, a registered charity cannot merely contribute to, or act as a financial conduit for, the programs of another organization.

To advance education in the charitable sense means formal training of the mind, advancing the knowledge or abilities of the recipient, or improving a useful branch of human knowledge through research.¹⁶

¹⁵ See notably *Canadian Committee for the Tel Aviv Foundation*, *supra* note 14 at para 40.

¹⁶ For more information, see CRA Summary Policy, CSP-E01, *Advancement of education*.

To further purposes that advance education, the activity must be sufficiently structured, have a teaching or learning component, and involve a legitimate, targeted attempt to educate. The following statement from the *Vancouver Society*¹⁷ decision summarizes the direction of the court in this regard:

[S]o long as information or training is provided in a structured manner and for a genuinely educational purpose - that is, to advance the knowledge or abilities of the recipients - and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education. (at para 169)

Even while advocating a more inclusive approach to education, the Ontario Law Reform Commission also cautioned against treating as educational those activities which, although they advance legitimate goods, do not include any actual teaching or learning component. ... I would agree with that caution. To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough. Neither is 'educating' people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination. (at para 171)

The CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization's operations.

The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.¹⁸

Background of the Organization

¹⁷ See *Vancouver Society*, supra note 4.

¹⁸ See, for example, *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 69, [2002] FCJ no 1260, Sharlow JA.

The Organization was incorporated by Letters Patent under Part II of the *Canada Corporations Act* on October 4, 1982, as Les amis Canadiens du canal 57/Canadian Friends of Channel 57.

The Organization was registered as a charity effective January 1, 1983. Its establishing purposes are:

- to promote education both in Canada and abroad through television programs dispensed by the University of New York through Channel 57.
- to particularly gather and serve those Canadians interested in the development of educational programs dispensed by the University of New York through Channel 57.

The Organization's name has changed since its initial registration, as has its designation. It was originally designated as a public foundation; on July 1, 1993, its designation was changed to a charitable organization.

The Organization's ongoing programs, according to its most recently filed Form T3010, *Registered Charity Information Return*, are "underwriting of public programming."

Identified Areas of Non-Compliance

1. Failure to be constituted for exclusively charitable purposes

It was our position that the Organization's first establishing purpose fell under the second category of charitable purposes (advancement of education). However, upon further examination, we are now of the opinion that, because the purpose states "to **promote** education [Emphasis added]" rather than "to educate", this purpose would not fall under the second category. It may be seen as broad, but it is analogous to purposes under the fourth category, such as the promotion of health, the promotion of industry and commerce for the benefit of the public, and the promotion of public safety. For an entity to be registered as a charity in Canada under this purpose, it must also carry out activities that further this fourth category purpose.

Our concern with the Organization's second establishing purpose remains unchanged, it is broad and vague and as a stand-alone purpose, could prevent the Organization's continued eligibility for charitable registration.

As discussed above, we must also look to an organization's activities to determine if it has adopted other purposes.

In the course of the audit we found that the Organization's activities for the fiscal period ending June 30, 2011, were to raise funds to help cover the costs of Mountain Lake PBS programming.

In all of its filed Form T3010s since 2012, the Organization has identified its ongoing programs as "underwriting of public programming".

At mountainlake.org/news-from-home-les-nouvelles-de-chez-nous/¹⁹ we found the following, dated February 27, 2017:

Welcome to the new home of our Canadian Friends of Mountain Lake PBS on mountainlake.org!

THANK YOU for over 40 years of viewing and supporting Mountain Lake PBS.

We could not be all that we are without you. We are true partners in the journey of possibilities that public television offers. Together we play a leading role in our community's growth. Together we give children from all walks of life a leading edge in school, contributing to stronger and more vibrant communities. Together we can work with local organizations in Montreal and beyond like Vanier College, the Jeanne Sauvé Foundation, McGill University, the Jewish Public Library, the Montreal Arts Centre, the Fraser Hickson Library, les Grands Ballets Canadiens and many more, to make Mountain Lake PBS Canada's most impactful, engaged and involved PBS station.

Given what we have reviewed, we have determined that the purpose of the Organization is to promote and support Mountain Lake PBS, by issuing receipts for gifts to the station from Canadian donors.

Mountain Lake PBS is not a qualified donee. An entity established to disburse gifts to an institution, such as Mountain Lake PBS, that is not a qualified donee would not be eligible for registration as a charity, unless such gifting was in support of the entity's own charitable activities.²⁰

¹⁹ This webpage was reviewed on July 5, 2017.

²⁰ See 149.1(2) of the Act.

2. Failure to devote resources to charitable activities carried on by the Organization itself

a) Lack of direction and control over the use of resources/resourcing a non qualified donee

To determine if the Organization devoted resources to charitable activities carried out by the Organization itself we reviewed documents given to us in the course of the audit, and in response to our initial determination. Since the majority of the Organization's expenditures are used outside of Canada, and that it uses an agent, Mountain Lake PBS, to carry out those activities, we relied upon documents that describe the Organization's relationship with its agent, to determine if the Organization exercised the required degree of direction and control over its resources.

Those documents, and our comments on them, include the following.

The Agency Agreement, dated March 1987, between the Organization and Mountain Lake PBS, includes the following clauses:

2. The Agent shall submit proposals for educational programming services to the Board of Directors of [the Organization], and [the Organization] will fund any such proposals it deems to be in conformity with its charitable purposes through contributions the latter receives from Canadian donors. The Agent will provide its viewers with such educational programming services as may be authorized by [the Organization] and provided by the Agent, or by the Agent in conjunction with other producers of educational television programs.

3. Canadian Friends shall at all times maintain direction, control and supervision over the use of its funds by the Agent.

The affidavit, dated April 29, 2013, from Harry Bloomfield, one of the Organization's directors, describes the Organization's relationship with its Agent. For the taxation year beginning July 1, 2010, ending June 30, 2011, he attended two meetings of the board of directors by way of teleconference.

As explained in the affidavit, on or about July 1, 2010, he received a letter signed by [REDACTED] the President and CEO of Mountain Lake PBS (and at the time a director of the Organization), along with the "Proposed Programing List". He understood that the list was prepared in consultation with the Director of Educational Programming at Mountain Lake PBS, who would "ensure that [each program] continued to meet the criteria of educational broadcasting under Canadian charity law."

The List names the programs, quoting from the letter:

which Mountain Lake PBS proposes it will acquire or produce and broadcast to the best of its ability, or substitute programs of like kind, for [the Organization's] use July 1, 2010 through June 30, 2011 for funds received from Canadian donors through [the Organization] during the same period.

The value of program services provided during this period shall not be less than \$861,000 CAN.

The copy of the list we have received simply identifies the programs by name. There is no evidence that the Organization received or reviewed any of the following:

- detailed descriptions of the programs;
- production details, such as who was the producer if it was not Mountain Lake PBS, when it would be produced, and the identities of any co-producers or their share of the costs of production;
- individual costs of each program and the Organization's contribution to the costs of each individual program;
- how often or exactly when each program will be broadcast; or
- an explanation of how each individual program advances education, or any other charitable purpose, under Canadian charity law.

According to the materials we have received, the letter of July 1, 2010, and accompanying list were addressed in Resolutions of the Board of Directors, dated September 30, 2010, with the following motion:

BE IT RESOLVED THAT the attached proposal for the programming services broadcast to Canada stipulating a list of specific programming which Mountain Lake PBS proposes to acquire or produce and broadcast, submitted by [REDACTED] President and CEO to the Board of Directors on July 1, 2010, be and is hereby approved.

We have not received documents showing evidence of a discussion by the Organization's directors as to the merits of each program, or the Organization's involvement in the production or acquisition of each program, or how the Organization would monitor the use of its resources.

As to expenditures, the affidavit explains the "Funding Procedure":

- c. During the course of the 2010 taxation year, when the purchase of broadcasting rights was required, funding for the production of programming was required, or

funding of fundraising activities of [the Organization] was required, a request was made to either me [Harry Bloomfield] or [REDACTED], a director of [the Organization], generally by [REDACTED] Mountain Lake PBS;

- d. [REDACTED] explained the purpose for which the funds were to be used;
- e. I [Harry Bloomfield] authorised [REDACTED] prior to each transfer of funds from [the Organization's] bank account to the bank account of Mountain Lake PBS.

We reviewed many emails from the Mountain Lake PBS Bookkeeper informing the Organization that funds were being taken from the Organization, that all use similar wording. For example, the email dated July 7, 2010, is as follows:

Subject: transfer 4,000.00

Dear Harry,

By this present I am giving you notice as per many conversations that I am taking \$4,000.00 today further to pledges made to [the Organization]. Please email if you have any objections to this request. These monies will be used for programming.

Sincerely,

[REDACTED]

In the emails we reviewed, only the amounts changed. For example, the email of August 17, 2010, the amount is for \$35,000.00; September 3, 2010, it is \$4,000.00; November 3, 2010, it is \$3,000.00; November 11, 2010, it is \$13,000.00; and December 21, 2010 it is \$5,000.00. The amounts are almost always multiples of \$1,000.00. The emails do not refer to any specific program (such as the name of the television program, or how many episodes of a particular program), or how the funds would be used, such as whether the funds were going towards production or purchase costs, hiring of staff, renting facilities, or purchasing equipment for use in productions.

We did find the relative value of the Organization's contribution to the activities of Mountain Lake PBS in statements identifying the "percentage of Canadian participation" during specified fiscal years. For example, in the letter accompanying the Proposed Programming List dated July 30, 2011, from the President and CEO of Mountain Lake PBS and the Organization, the "Percentage of Canadian participation during the 2010-2011 fiscal year [is] 34.26%".

Returning to Mr. Bloomfield's affidavit:

40. During all previous years while I was a director of [the Organization], a similar procedure was followed with respect to the educational purposes [the Organization] would support in carrying out its charitable purposes.

41. During all previous years while I was a director of [the Organization], a similar procedure for transferring funds to Mountain Lake PBS to pay for the educational programming that [the Organization] would support in carrying out its charitable purposes as the Funding Procedure was followed.

The requirements and responsibilities described in the March 1987 Agency Agreement, referred to above, are vague and lack the necessary specific details that, if followed, could show that the Organization is carrying out its own activities through Mountain Lake PBS.

Further, given the documents we reviewed and the examples described above, it is our position that the Organization not does not exercise the required level of direction and control over its resources to show that its resources are being used to carry out its own activities.

In summary, the Organization has not established that activities purported to be those of the Organization are effectively authorized, controlled, and monitored by the Organization. It is our position that the Organization acts as a conduit for Mountain Lake PBS, an entity that is not a qualified donee. As such, the Organization is ineligible for registration as a charity.

b) Conduct of non-charitable activities

As explained above, the Organization's demonstrated activities show that it is acting as a conduit for an entity that is not a qualified donee, and are not acceptable for a registered charity.

We did attempt to review the purported activities of the Organization (Mountain Lake PBS programming funded by the Organization), to determine (if the Organization was established for charitable purposes and that it was able to show that it controlled its purported activities) whether those purported activities meet our understanding of charitable activities. Our understanding of charitable activities is, activities "that directly further charitable purposes and not other, non-charitable

purposes"²¹; meet requirements under the Act²²; and, are carried out in ways recognized in common law²³.

We were given samples of, and materials identifying and describing, Mountain Lake PBS programs. Many of the programs we reviewed could be charitable activities, furthering purposes under the second category, or the fourth category, specifically under advancing the public's appreciation of the arts²⁴. However, because of how the Organization carries out its activities, as described above, we were unable to identify with any degree of confidence which specific programs the Organization funded, or the extent of that funding to the acquisition or production costs. Therefore, because we were unable to clarify the Organization's purported activities, we were unable to determine if the activities are charitable.

To continue to be eligible for registration, a charity must be able to show that it carries out charitable activities. The Organization has not met this requirement.

Summary

For the reasons described above: the Organization not being established for charitable purposes; the lack of direction and control over its purported activities; and its inability to show that it is carrying out charitable activities, it is our position that there are grounds to revoke the registered status of the Organization.

The Organization's Options

As noted previously in this letter, the Organization has the opportunity to make additional representations or present additional information. In this regard, the Organization's options are outlined below.

a) No Response

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

²¹ *Vancouver Society* para 154.

²² For example, funding qualified donees

²³ For example, the limits to activities advancing education outlined in *Vancouver Society* paras 160 to 172.

²⁴ For more information see CG-018, *Arts activities and charitable registration*.


b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 60 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

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

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below.

Yours sincerely,



Robert Webster

Telephone: (613) 670-9508
Facsimile: (250) 363-3000
Address: Charities Directorate
Canada Revenue Agency
Ottawa ON K1A 0L5

Enclosures:

c.c.: Harry Bloomfield
Chairman
The Canadian Friends of WCFE-TV 57


Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

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

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

149.1(3) Revocation of registration of public foundation

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

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

149.1(4) Revocation of registration of private foundation

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

(a) carries on any business;

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

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

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

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

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

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

149.1(4.1) Revocation of registration of registered charity

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

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

(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

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

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

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

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

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

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

168(2) Revocation of Registration

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

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

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

168(4) Objection to proposal or designation

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

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

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

180(1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Section 188: Revocation tax

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

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

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

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

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

188(1.1) Revocation tax

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

$$A - B$$

where

A

is the total of all amounts, each of which is

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

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

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

B

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

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

188(1.2) Winding-up period

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

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

188(1.3) Eligible donee

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

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

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

188(2) Shared liability — revocation tax

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

188(2.1) Non-application of revocation tax

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

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

188(3) Transfer of property tax

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

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

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

188(4) Transfer of property tax

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

188(5) Definitions

In this section,

“net asset amount”

« *montant de l'actif net* »

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

$$A - B$$

where

A

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

B

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

“net value”

« *valeur nette* »

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

$$A - B$$

where

A

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

B

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

189(6) Taxpayer to file return and pay tax

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

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

189(6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

(a) the amount, if any, by which

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

exceeds

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

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

189(6.3) Reduction of liability for penalties

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

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

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

189 (7) Minister may assess

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