

REGISTERED MAIL

■ Shimon Aisenbach
Director
Canadian Friends of Cuban Jewry
■

BN: 891822249RR0001
File number: 100648
Case number: 254061

Dear ■ Shimon Aisenbach:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated June 17, 2021 (copy enclosed), in which Canadian Friends of Cuban Jewry (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2015 to December 31, 2016. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered the Organization's written response, dated November 15, 2021. The Organization's response has not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, the Organization failed to devote all of its resources to its own charitable activities; lacked direction and control over the use of resources/resourcing non-qualified donees; conveyed an undue benefit upon a director; delivery of non- incidental private benefits; failed to provide adequate documentation to demonstrate on-going and active direction and control over funds purportedly sent to volunteers to carry out its activities outside of Canada; failed to issue official donation receipts in accordance with the Act; and failed to file an accurate information return. This non-compliance constitutes a serious breach of the requirements for registration. For these reasons, and for each reason alone, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated June 17, 2021, and pursuant to subsection 168(1), 149.1 and 149.1(2), of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e), and subsection 149.1(2), 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
891822249RR0001	Canadian Friends of Cuban Jewry Thornhill, ON

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

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

Should the Organization choose not to file an objection to this notice of intention to revoke with the CRA within this period, 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. As such, the Organization's registration will be revoked on the date of publication.

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 Khare
Director General
Charities Directorate

Enclosures

- CRA letter dated June 17, 2021
- Organization's representations dated November 15, 2021
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.:



June 17, 2021

██████████ Shimon Aisenbach
President
Canadian Friends of Cuban Jewry
██████████

BN: 891822249RR0001
File #: 1006485

Dear █████ Shimon Aisenbach:

Subject: Audit of Canadian Friends of Cuban Jewry

This letter results from the audit of the Canadian Friends of Cuban Jewry (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2015, to December 31, 2016.

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

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failed to devote resources to charitable activities carried on by the Organization itself <ul style="list-style-type: none">○ Lack of direction and control over the use of resources / resourcing non-qualified donees	149.1(1), 149.1(2), 168(1)(b)
2.	It is not constituted and operated for exclusively charitable purposes: <ul style="list-style-type: none">○ Delivery of non- incidental private benefits	149.1(1), 149.1(2), 168(1)(b)
3.	Failed to maintain adequate books and records	149.1(2), 168(1)(e), 188.2(2)(a), 230(2), 230(4), 230(4.1)
4.	Failed to issue donation receipts in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), 188.2(2)(c), Regulations 3500 and 3501
5.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(2), 149.1(14), 168(1)(c), 188.1(6), 188.2(2.1), Regulation 200

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 respond and present additional information. The

Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

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 in furtherance thereof. To be charitable, a purpose must fall within one or more of the following four categories (also) known as “heads” of charity and deliver a public benefit:

- Relief of poverty (first category);
- 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 recognized 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”. To be socially useful, a benefit must have public value and a demonstrable impact on the public. 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. 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.
- The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a 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 purposes(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 usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.

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

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

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 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.

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement 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, and are actually implemented. For this purpose, the charity must retain, and make available to the CRA upon request, documentation to show that it exercises the required direction and control, such as:

- communicate a clear, complete, and detailed description of the activity to the intermediary;
- monitor and supervise the activity, including requiring regular reporting;
- provide clear, complete, and detailed instructions to the intermediary on an ongoing basis;
- make periodic transfers of resources to the intermediary, based on demonstrated performance; and
- arrange for the intermediary to either keep the charity’s funds separate, or account for separately in its books and records.

A charity must record all steps taken to exercise direction and control as part of its books and records, thereby allowing 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.

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.¹

Background

The Organization was registered effective July 7, 1994, as a charitable organization in accordance with its Constitution and By-Laws dated July 7, 1994. The Organization's purpose is as follows:

- To provide basic religious needs for the Jewish community in Cuba.

The activities at the time of registration were:

- Visiting Cuba on a regular basis to create a spirit awareness among Cuban Jews.
- To officiate at religious services, explain various Jewish festivals, teach young and old to read the prayer book and various religious laws.
- Distribute supplies used in religious parties for children and other activities of a religious nature.
- Distribute kosher food and explain its importance.

The registration was based on the information supplied by the Organization and on the understanding that it would be carrying out the activities listed in its application.

Previous non-compliance

The Organization was the subject of a previous audit for the period from January 1, 2007, to December 31, 2008. The following areas of non-compliance were identified during the course of that audit:

- Failure to devote resources to charitable activities carried on by the Organization itself;
- Failure to maintain adequate books and records;
- Providing a personal benefit to a member of the Organization; and
- Inaccurate Form T3010, Registered Charity Information Return.

The CRA provided the Organization with an opportunity to resolve the above identified non-compliance through the implementation of a compliance agreement (copy attached). The agreement was signed on April 12, 2011, by ██████ Shimon Aisenbach, the founder and only active board member of the Organization. ██████ Aisenbach remains an active board member. By signing the compliance agreement, the Organization agreed to implement and adhere to the following corrective measures no later than June 14, 2012:

¹ See for example Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 69.

- maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada;
- maintain and make available books and records to allow the CRA to verify that all of its resources have been used for its own activities;
- no part of the income which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder or trustee; and
- file an accurate T3010 return.

Current audit findings

The current audit was conducted as a follow up to the signed compliance agreement. The current audit found that the Organization had not implemented the corrective measures described in the compliance agreement, and identified new areas of non-compliance. Based on the non-compliance identified during the two audits, we remain concerned about the Organization's compliance with the requirements of charitable registration.

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

Identified areas of non-compliance

1. Failed to devote resources to charitable activities carried on by the Organization itself

Lack of direction and control over the use of resources / resourcing non-qualified donees

Legislation and jurisprudence

As mentioned above, a registered charity may only use its resources (funds, personnel and/or property) in two ways:

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

We refer to the comments of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*:

Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations Overseas.²

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

And

Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities.³

As re-iterated by the Court in *Lepletot v MNR*⁴, an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel v MNR* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.⁵

Audit findings

Based on the information received and reviewed, it is our view that the Organization does not exercise the required degree of direction and control over the use of its funds, or over the activities conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act.

██████████ Aisenbach claims that supporters of the Organization who were travelling to Cuba would volunteer to transport perishable goods, clothing and other items to persons in need on the Organization's behalf.

While the Organization did provide cargo container receipts, no other records were provided to show how the Organization directed and controlled the use of the transferred resources. For example,

- how did the Organization select the volunteers to transport the containers to Cuba;
- the identity of the volunteers;
- how did the Organization select the non-qualified donee(s) that received the containers in Cuba;
- the identity of the non-qualified donee(s); and
- how did the Organization ensure that the non-qualified donee distributed the contents of the containers to needy persons in Cuba on its behalf.

³ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

⁴ *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

⁵ *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

As such, we could not verify that the perishable goods, clothing or other items were distributed to needy persons in Cuba on the Organization's behalf.

Gifting to non-qualified donees

In addition to carrying on its own activities, a charity can make gifts to qualified donees.

A gift is a transfer of money or other resources without compensation. A qualified donee is defined in the Act as an organization that can issue official donation receipts for gifts they receive from individuals and corporations.

Some types of qualified donees include:

- registered Canadian charities
- her Majesty in right of Canada, a province, or a territory
- a registered Canadian municipality
- certain registered universities outside Canada
- the United Nations and its agencies

The Organization is conducting its purported activities through emissaries recruited by "Chabad-Lubavitch Headquarters" in New York and, most, if not all, purported activities were already being conducted by these emissaries. For this reason, the existence of an arrangement between the Organization and the emissaries that demonstrates that the Organization exercises sufficient and continuing direction and control over, and full accountability for, all its resources and related activities, is critical.

██████████ Aisenbach informed the CRA that rarely does he know or meet these emissaries before they travel to Cuba, and that an intermediary agreement was not created as these emissaries know their mandate because they have studied the Chabad.

Based on the monthly envelopes made available, the Organization made the following payments to individuals described as emissaries or volunteers in Cuba and the United States:

- \$24,571.46 for fiscal year end (FYE) 2015, and
- \$19,373.73 for FYE 2016.

██████████ Aisenbach advised that these payments were for the flights of the emissaries, along with rental accommodations, kosher food, tokens of appreciation and items required for religious services and festivals that the emissaries were officiating. However, no supporting documentation was provided to show that the Organization exercised the required direction and control over these activities such as:

- reports from the emissaries that describe their activities and use of resources;

- internal communications, memoranda or e-mails relating to the provision of ongoing direction to the emissaries; and
- copies of all invoices or receipts.

The documentary evidence provided by the Organization included pictures, brochures and an editorial in a magazine called “Jabad”, outlining the activities carried out by the Organization in Cuba.

Absent adequate supporting documentation, it is not clear that the Organization maintained direction and control over its resources and over the conduct of its activities. It appears that the Organization’s involvement in, and authority over, the actual conduct of any substantive activity is limited to providing funds to the emissaries. Further, given the absence of appropriately structured arrangements, such as intermediary agreements, establishing the Organization’s necessary direction and control over its funds and purported activities, it appears that the Organization was funding non-qualified donees, which is contrary to the provisions of the Act.

Consequently, it appears the Organization has not complied with the corrective measures identified in the 2011 compliance agreement, such that it has not devoted all of its resources to its own charitable activities or to gifting to qualified donees; therefore, it has failed to meet the definitional requirements of subsections 149.1(1) and 149.1(2) of the Act. For this reason, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. It is not constituted and operated exclusively for charitable purposes

Delivery of non- incidental private benefits

Legislation and jurisprudence

In order to satisfy the definition of a “charitable organization” pursuant to subsection 149.1(1) of the Act, “charitable organization” is, amongst other criteria, defined as, “an organization [...] no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof.”

A registered charity must be established and operated for the 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 benefit⁶ 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 or members/volunteers while they are carrying out activities that support

⁶ “Personal benefit” is also sometimes used instead of “benefit” in the common law private benefit context.

the charity, or to third parties who provide the charity with goods and services. Where it can be fairly considered that the eligibility of a recipient relates solely to the relationship of the recipient to the 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.⁷

(i) **Necessary** – Necessary means legitimately and justifiably resulting from:

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

and

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

and

(iii) **Proportionate** – 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.

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;
- promoting the work, talent, services, or businesses of certain persons or entities, without justification.

⁷ For more information, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

Audit findings

Based on our review of the Organization's operations, [REDACTED] Aisenbach is the only individual with the authority to access funds from the Organization's bank account. Our audit found that [REDACTED] Aisenbach had withdrawn funds from the Organization's bank account through various means such as cash, bank drafts, certified cheques and purchases. The funds were also used for the purchase of prepaid credit cards and money orders to pay for expenses. In addition, the Organization's bank statements show other dollar amounts being withdrawn.

Based on available records, there was apparently no division of expenses between those incurred on behalf of the Organization and those incurred for personal use.

That said, it is our view that the following expenditures provide an unacceptable private benefit:

Personal Residence

Rent

The audit revealed that the Organization's physical location is the basement of [REDACTED] Aisenbach's rented home located in Thornhill, Ontario. Based on the Organization's Registered Charity Information Return (T3010 return) for fiscal years 2015 and 2016, occupancy costs were reported in the amounts of \$9,780 and \$8,965 respectively. For the 2015 fiscal year, the Organization provided money orders and certified cheques that were issued to [REDACTED] Aisenbach's landlord, with the last name [REDACTED] to pay for rent which totaled an amount of \$9,568. For the 2016 fiscal year, the only supporting documentation made available to substantiate the reported occupancy costs paid by the Organization was one bank draft made out to the property owner, same last name [REDACTED] in the amount of \$815.

Hydro

Based on the Organization's T3010 returns for fiscal years 2015 and 2016, utility costs were reported in the amounts of \$4,928 and \$3,194 respectively. As supporting documentation, the Organization provided bank drafts in the amount of \$4,258 for fiscal year 2015, issued to a company in the name of [REDACTED] to pay for hydro.

Given the absence of documentation, such as a rental agreement or utility invoices, to confirm the proportion of the home expenditures that were for charitable or personal use, we were unable to verify if the charitable expenditures and the Organization's allocation for rent and utilities was reasonable.

Travel costs

Motor Vehicle

Based on the Organization's T3010 returns for fiscal years 2015 and 2016, travel costs were reported in the amounts of \$3,945 and \$4,388 respectively. [REDACTED] Aisenbach stated

during the audit that his personal vehicle had been used when meeting with potential donors or gathering items to be shipped to Cuba. Based on the gas receipts and invoices provided, the Organization paid for the gas, car rental, and repairs of [REDACTED] Aisenbach's vehicle, totaling \$4,320.30 in FYE 2015 and \$4,829.63 in FYE 2016. Minor discrepancies between the amounts reported on the Organization's T3010 returns and the source documentation provided for fiscal years 2015 and 2016 was \$375.30 and \$547.58 respectively. The Organization did not explain the discrepancy. Further, no documentation was provided, such as a travel log, that would identify the percentages for charitable or personal use of the vehicle, nor was any documentation provided that demonstrated that [REDACTED] Aisenbach's vehicle or the rental vehicle were used for a charitable purpose.

Flights to New York

During our review of the Organization's books and records, we were provided with several boarding passes bound for flights to various locations including Cuba and New York, that occurred during the fiscal periods under audit. The Organization provided an invoice that showed it had paid for a flight to New York City for [REDACTED] Aisenbach in the amount of \$353.21 in fiscal year 2015. No supporting documentation was provided to explain the purpose of the New York City trip made by [REDACTED] Aisenbach or to demonstrate how this trip furthered the charitable purpose of the Organization, nor was supporting documentation provided for any other trips made for charitable purposes.

Groceries

Based on grocery receipts provided by the Organization, it appears the Organization paid for groceries in the amount of \$9,336.10 for FYE 2015 and \$17,858.74 for FYE 2016. No documentation was provided to show how the purchase of these groceries was in furtherance of the Organization's charitable purposes.

Loan

Based on a certified cheque provided, the Organization had repaid an outstanding loan of \$5,000 in FYE 2015. However, the Organization's financial statements and the T3010 return for FYE 2015 did not show that the Organization had any outstanding loans during that fiscal period. Further, no documentation was provided to show what the loan was for, the total amount of the loan if greater than \$5,000, the terms or repayment of the loan including the interest rate, or how it was used for activities in furtherance of the Organization's charitable purposes.

Other Expenditures

Based on the receipts reviewed, we found other expenditures totaling over \$20,000 for the audit period that were paid for by the Organization. These expenditures included televisions, a clothes iron, coffee urn, insulation, lottery tickets, luggage, prescriptions and over the counter medication, shoes and shoe repairs, clothing, prepaid credit cards, miscellaneous items (party favors, gift bags, a duster, etc.), debit card cashback and ATM

withdrawals. However, no documentation was provided by the Organization to demonstrate that these expenditures were made in furtherance of a charitable program.

For reference, we have included a breakdown of the above mentioned expenditures below:

	<u>FYE 2015</u>	<u>FYE 2016</u>
Rent - Personal Residence	\$ 9,568.00	\$ 815.00
Hydro - Personal Residence	\$ 4,258.00	
Gas - Motor Vehicle	\$ 2,823.68	\$ 1,794.92
Repairs – Motor Vehicle	\$ 1,096.22	\$ 3,034.71
Vehicle Rental	\$ 400.40	
Airline Flight	\$ 353.21	
Groceries	\$ 9,336.10	\$17,858.74
TV	\$ 550.88	\$ 418.20
Lottery Tickets	\$ 44.00	\$ 6.00
Clothing, shoes & shoe repair	\$ 1,162.53	\$ 202.53
Prescriptions / over the counter medication	\$ 365.20	\$ 299.74
Clothes Iron		\$ 14.49
Coffee Urn		\$ 67.79
Insulation	\$ 93.48	
Luggage	\$ 145.76	\$ 153.68
Loan	\$ 5,000.00	
Prepaid credit cards	\$ 312.90	\$ 1,503.95
Miscellaneous items	\$ 556.33	\$ 635.33
Debit card cashback	\$ 6,304.75	\$ 1,998.14
ATM withdrawals	<u>\$ 4,520.37</u>	<u>\$ 2,684.23</u>
Total	\$46,891.81	\$31,487.45

By paying for expenses, or providing advantages, that were not apparently justified or necessary to perform required duties or to further a charitable purpose, and/or subsidizing unnecessary or unrelated travel, and/or permitting unjustified use of resources belonging to the Organization, it appears the Organization provided an unacceptable private benefit on [REDACTED] Aisenbach.

An organization that delivers an unacceptable private benefit is not using all of its resources for charitable purposes, and may have its registered status revoked. Given the repeated and serious nature of the non-compliance identified in the current audit, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failed to maintain adequate books and records

Legislation and jurisprudence

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

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

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

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

The requirement relating to the maintenance of books and records, and books of account, is based on several court decisions, which have held, among other things, that:

- the onus is on the registered charity to provide that its charitable status should not be revoked.⁸
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required books and records at some later date.⁹
- Subsection 168(1)(e) of the Act provides that the Minister may propose to revoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act. The Federal Court of Appeal has affirmed this, determining that non-compliance with subsection 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.¹⁰

⁸ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at paras 26-27.

⁹ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at 39; See also Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, 2004 FCA 397.

¹⁰ Opportunities for the Disabled Foundation v Canada (National Revenue), 2016 FCA 94 at para 39; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

- The requirement to keep proper books and records is foundational and non-compliance with the requirement is sufficient to justify revocation.¹¹

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

Given the significant privileges that flow from registration as a charitable organization under the Act, the Minister must be able to monitor the continuing entitlement of charitable organizations to those privileges.¹² In that regard, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records,¹³ and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.¹⁴

Audit findings

During the audit, repeated requests were made to the Organization and its accountant for bank records and related documents. The Organization advised that some of these records were retained by its accountant. Therefore, records retained by the accountant, such as working papers or any other documentation pertaining to the Organization's books and records, were not provided to the auditor. As such, only minimal audit testing could be performed for this audit.

For the 2015 and 2016 fiscal periods, the audit found that the Organization failed to maintain adequate books and records of account in the following facets of its operations:

- The Organization provided a summarized spreadsheet of expenses incurred during the audit period, however, the information on the spreadsheet could not be matched to the source documents nor did it reconcile with the expenditures reported in the T3010 returns for fiscal years 2015 and 2016. There were material discrepancies that could not be explained by the Organization.

¹¹ Jaamiah Al Uloom Al Islamiyyah Ontario v Canada (National Revenue), 2016 FCA 49 at para 15; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

¹² Humane Society of Canada for the Protection of Animals and the Environment v Canada (National Revenue), 2015 FCA 178 at para 80.

¹³ Humane Society of Canada for the Protection of Animals and the Environment v Canada (National Revenue), 2015 FCA 178 at para 80.

¹⁴ Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

For example:

	<u>FYE 2015</u>	<u>FYE 2016</u>
Expenditures reported as per T3010	\$ 173,731.00	\$ 173,861.00
Spreadsheet provided	<u>\$ 90,118.55</u>	<u>\$ 86,351.98</u>
Discrepancy	\$ 83,612.45	\$ 87,509.02

- Accounting records for the magazine ads sold in the “Jabad Magazine”, such as the cost of the ads, bank deposits substantiating the revenue produced, and the costs associated with publishing the magazine were not provided.
- Accounting records for the Scotch and Cigar dinner, such as ticket sales, the cost of the dinner, raffle proceeds, auction proceeds, or documentation confirming the number and value of the cigars donated were not provided.
- Structured arrangements between the Organization and the emissaries were not identified.
- Financial or narrative reports from any of the emissaries the Organization identified as carrying out its purported activities were not provided.
- Examples of communication between the Organization and its emissaries were not provided.
- Detailed minutes reflecting discussions and operations regarding the Organization’s programs and activities were not provided.

Internal Controls

The audit found that the Organization’s internal controls were inadequate as follows:

- inadequate authorization of transactions;
- no overview by the board of directors;
- sole control of the Organization’s affairs and resources were with [REDACTED] Aisenbach; and
- lack of structure to effectively allow directors to approve or review, in detail, the Organization’s expenditures.

The Organization’s lack of internal controls contributes to our concern that a large amount of its expenditures appear to be personal in nature.

Based on our review of the books and records provided, the Organization has not demonstrated that it has maintained adequate books and records. Further, due to minimal source documentation provided, we were unable to verify whether the Organization’s resources were used in furtherance of its charitable purposes. The issue of inadequate books and records was also raised in the previous audit, and under paragraph 188.2(2)(a) of the Act, a charity may receive a notice of suspension of its authority to issue official donation receipts if it contravenes section 230 of the Act.

Given the Organization’s failure to fulfill its requirement to maintain and make available adequate books and records, as described above, and its continued failure to comply with the corrective measures identified in the 2011 compliance agreement, it is our view that the present case constitutes repeat serious and material non-compliance. For this reason,

there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

4. Issued donations receipts not in accordance with the Act and/or its Regulations

Legislation and jurisprudence

To issue an official donation receipt (ODR), a registered charity must determine whether or not the donation constitutes a gift. Because the term gift is not defined in the Act, it is necessary to refer to the applicable common or civil law for its meaning.

Under the common law, “a gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor” (The Queen v Friedberg, [1992] 1 CTC 1, 92 DTC 6031 (FCA)). Generally, for purposes of sections 110.1 and 118.1 of the Act, a gift under common law is made if a taxpayer has donative intent, and all three of the following conditions are satisfied:

- there must be a voluntary transfer of property to a qualified donee;
- the property transferred must be owned by the donor; and
- no benefit or consideration must flow to the donor.

The law provides various requirements with respect to issuing ODRs by registered charities. These requirements are contained in Regulation 3500 and 3501 of the Act, and are described in detail in the CRA’s Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value¹⁵.

Split-receipting – Intention to give

A transfer of property for which some advantage (or consideration) is received does not in and by itself disqualify the transfer from being considered a gift provided the fair market value¹⁶ (FMV) of the advantage does not exceed 80% of the value of the transferred property and the transfer was made with the *intention to make a gift* (donative intent).¹⁷

Split receipting is the method used to calculate the eligible amount of a gift for receipting purposes when the donor has received an advantage (consideration) in return for his or her donation. To figure out the eligible amount of the gift, a charity has to subtract the FMV of the advantage from the FMV of the gift. Some examples of an advantage are: cost of the meal, cost of the entertainment and door prizes. Where the advantage does not exceed \$75 or 10%, the full amount paid for the gift may be receipted. However, where advantages have a combined FMV that is more than \$75 or 10% of the FMV of the gift, a charity has to subtract these advantages from the FMV of the gift when issuing receipts. Where the

¹⁵ [Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value - Canada.ca](#)

¹⁶ Fair market value is usually the highest dollar value you can get for your property in an open and unrestricted market and between a willing buyer and a willing seller who are knowledgeable, informed, and acting independently of each other.

¹⁷ See subsections 248(30) - (32) of the Act

advantage is more than 80% of the FMV of the gift, the CRA generally considers that there is no true intention to make a gift. Therefore, a charity cannot issue a receipt.

Audit findings

During the audit, copies of the ODRs provided were examined and compared to the amounts reported on line 4500 of the Organization's T3010 returns for the fiscal periods under audit. The following material discrepancies were found:

	<u>FYE 2015</u>	<u>FYE 2016</u>
Tax received gifts – line 4500	\$ 100,365	\$ 102,071
Donation receipts submitted for audit	<u>\$ 134,303</u>	<u>\$ 135,936</u>
Discrepancy	\$ 33,938	\$ 33,865

Further, we were unable to verify the total amount of ODRs issued as the Organization did not provide sufficient documentation to validate this amount, such as a donation list. The Organization did provide deposit slips and photocopies of cheques, however, these could not be matched to the ODRs issued. As such, we could not verify that the Organization actually received the funds from the donor before an ODR was issued. When we requested additional documentation, the Organization stated that copies of ODRs were sufficient for our review. As such, no further documentation or records were provided.

Magazine ads

The Organization publishes an annual magazine where individuals and businesses purchase quarter, half and full page ads. The cost of these ads was not provided nor were the accounting records for establishing the amounts received from the various individuals and businesses. [REDACTED] Aisenbach stated during the initial interview that an ODR was issued for the full cost of the ads published, as each ad was commemorating individuals who had made a significant contribution to the Jewish community in Canada and in Israel.

Applying the legal principles outlined above, the ad purchases do not, in our view, meet the legal definition of a gift, in that the purchases are not made with the requisite donative intent and the conditions stated above were not satisfied. Therefore, ODRs should not have been issued.

Gifts in kind (cigars)

The three invoices provided to support the valuation of the cigars were in Cuban pesos, the Organization converted the pesos to Canadian dollars at an exchange rate of 1.3468. The converted amounts of the cigars did not reconcile to the amount of ODRs issued. As such, it appears that the Organization did not provide all the ODRs issued for our review.

Fundraising - Scotch & Cigar Cocktail Dinner

During the audit, [REDACTED] Aisenbach stated that the Organization held an annual Scotch & Cigar Cocktail Dinner. Funds raised from this event were from ticket sales, raffles and an auction wherein the Organization received a portion of the proceeds. [REDACTED] Aisenbach stated during the initial interview that participants of this event receive a dinner, cigars and other gifts and that ODRs were issued based on split receipting rules. Due to minimal supporting documentation provided by the Organization for the Scotch and Cigar Cocktail Dinner, we were unable to verify the eligible amount that was used for the ODRs issued for the fundraising event.

Under paragraph 188.2(2)(c) of the Act, a charity may receive a notice of suspension of its authority to issue official donation receipts for receipts that contain incorrect information. Further, based on the information and documentation provided by the Organization, it is our view ODRs were issued that were not in accordance with the Act and its Regulations, and there may be grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

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

Legislation and jurisprudence

Subsection 149.1(14) of the Act states that:

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

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.¹⁸

Audit findings

The Organization inaccurately completed the following worksheets and schedules of its T3010 returns for the fiscal periods ending December 31, 2015, and December 31, 2016:

¹⁸ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

Section C Programs and General Information

C 4 - The Organization failed to report that it was carrying out activities outside Canada.
C 8 - The Organization failed to report that it compensated [REDACTED] Aisenbach and his spouse for services rendered.
C11- The Organization failed to report that it received gifts in kind (cigars) and that it issued ODRs for the fundraising event.

Section F – Confidential Data

The Organization incorrectly recorded both the physical address of the Organization and where the Organization's books and records were retained.

[REDACTED] Aisenbach stated that for convenience, all documentation initially provided when the Organization was established remained status quo. He confirmed that he operated the Organization out of his personal residence that is located in Thornhill, Ontario, and has done so for the past twenty years. He also confirmed that while the Organization's accountant resides in Montreal, the books and records are retained at his principal residence in Thornhill, Ontario.

Schedule 2 - Activities outside Canada

The Organization failed to report the expenditures on activities /projects carried outside of Canada.

Schedule 5 - Gifts in Kind

The Organization failed to complete this schedule and report the total amount of tax-receipted gifts in kind.

Schedule 6 – Detailed Financial Information

Line - 4500 **Total eligible amount of all gifts for which the charity issued tax receipts.**

The Organization failed to report all revenue for which it issued tax receipts. A review of the bank statements provided and the ODRs issued to donors in both FYE 2015 and 2016 revealed that the amounts reported on the T3010 returns had been understated.

Due to minimal supporting documentation and accounting for the Scotch & Cigar Cocktail Dinner, we were unable to determine the eligible amount that was used for the ODRs issued for the fundraising event.

Line - 4510 **Total amount received from other registered charities.**

The Organization failed to correctly report funds received from other registered charities. Our audit revealed that the Organization was in receipt

of funds from other registered charities. The funds received and those reported on the T3010 returns for FYE 2015 and 2016, were understated by the following amounts for each year:

	<u>FYE 2015</u>	<u>FYE 2016</u>
Gifts from Other Registered Charities- line 4510	\$ 26,795	\$ 23,965
Actual amounts received	<u>\$ 27,500</u>	<u>\$ 28,354</u>
Discrepancy	\$ 706	\$ 4,389

Line - 4630 **Total non tax-receipted revenue from fundraising.**

██████████ Aisenbach informed us during the audit that the Organization holds one fundraising event per year, the Scotch & Cigar Cocktail Dinner. The Organization failed to report the gross revenue received from its fundraising activities in FYE 2015 and 2016.

In addition, the Organization did not provide sufficient source documents to substantiate the expenses reported on the T3010 returns for FYE 2015 and 2016. As such, we were unable to verify the accuracy of the expenses reported for the period under audit.

T1235E Directors/Trustee and Like Officials Worksheet

We were informed during the audit that two of the directors of the Organization are not involved with the Organization. The addresses reported for all three directors are those used when the Organization initially applied for charitable status. As such, the information on the T1235E Worksheet has been incorrect for the past twenty years. While ██████████ Aisenbach is the only active director of the Organization, he stated that the non-active listed directors believe in the Organization and to keep the status quo he has not removed them from the worksheet.

Issuing information returns for amounts paid (T4/ T4A)

Generally, in accordance with Regulation 200(1) of the Act, a Form T4, Statement of Remuneration Paid (slip), must be completed if you are an employer (resident or non-resident) and you paid your employees employment income, commissions, taxable allowances and benefits, fishing income, or any other remuneration. Most amounts paid to an individual by an employer are referred to as remuneration. The T4 must be completed to report the following:

- salary, wages (including pay in lieu of termination notice), tips or gratuities, bonuses, vacation pay, employment commissions, gross and insurable earnings of self-employed fishers, and all other remuneration you paid to employees during the year;
- taxable benefits or allowances;
- retiring allowances;
- deductions you withheld during the year; and
- pension adjustment (PA) amounts for employees who accrued a benefit for the year under your registered pension plan (RPP) or deferred profit sharing plan (DPSP).

In addition, T4s must be completed for all individuals who received remuneration during the year if:

- amounts were deducted for CPP/QPP contributions, EI premiums, PPIP premiums, or income tax from the remuneration; or
- the remuneration was more than \$500.

Regulation 200(2) of the Act states that a Form T4A, Statement of Pension, Annuity and Other Income, must be issued if you are a payer, such as an employer, a trustee, an estate executor (or liquidator), an administrator, or a corporate director, and you paid other types of income related to an employment, such as lump-sum payments or self-employed commissions. Further, Regulation 200(2) of the Act requires that T4A slips and summaries be prepared for contract payments to individuals exceeding \$500 in the calendar year.

During the audit, [REDACTED] Aisenbach stated that he and [REDACTED] received funds from the Organization for "services rendered." However, the books and records provided did not indicate any remuneration paid to [REDACTED] Aisenbach or to [REDACTED] for services rendered. [REDACTED] Aisenbach also stated that, excluding time spent praying at the local Synagogue, all of his time was devoted to operating the Organization with [REDACTED] assisting him, when the need arose, and that his family's only source of income was from the Organization.

A CRA Rulings letter was issued to the Organization on July 7, 2015 (copy attached), whereby it was determined that both [REDACTED] Aisenbach and [REDACTED] were considered to be employees of the Organization. As such, when an organization pays remuneration to its employees, it must comply with the CRA's payroll requirements, such as issuing T4 or T4A slips to those employees. More information on these requirements can be found in Guide T4001, Employers' Guide – Payroll Deductions and Remittances, available on the CRA's website at Canada.ca/taxes.

Given the Organization's failure to fulfill its requirement of issuing T4 or T4A slips for the remuneration paid to [REDACTED] Aisenbach and to [REDACTED] and its continued failure to comply with the corrective measures identified in the 2011 compliance agreement, it is our view that the present case constitutes repeat serious and material non-compliance.

It is our view the Organization has failed to comply with the Act by failing to file an information return as and when required by the Act and/or its Regulations. Under subsection 188.1(6) of the Act, an organization that fails to file a return for a taxation year as and when required by subsection 149.1(14) is liable to a penalty equal to \$500, and under subsection 188.2(2.1) of the Act, an organization may receive a notice of suspension of its authority to issue official receipts for failing to report information that is required under subsection 149.1(14). As a result, there may be grounds to suspend the Organization's authority to issue official donation receipts.

Further, under paragraph 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file an information return as and when required under the Act or its Regulations. For this reason, there are grounds for revocation of the Organization's charitable status.

The Organization's options:

a) Respond

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 45 days** from the date of this letter to the address below. After considering the response, we will decide on the appropriate course of action. The possible actions include:

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

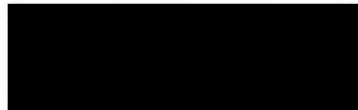
b) Do not respond

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

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Maria Grieco, may also be reached at 905-706-7804.

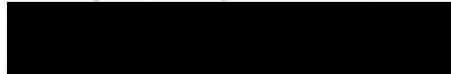
Yours sincerely,

A large black rectangular redaction box covering a signature.

Lysa D. Borland 
Audit Division
East Central Ontario Tax Services Office - Peterborough

Telephone: 905 706 7791
Facsimile: 705 876 6422
Address: 1161 Crawford Drive, Peterborough, Ontario K9J 6X6

Enclosures: - Compliance Agreement signed April 12, 2011

A black rectangular redaction box covering a list of enclosures.

Compliance Agreement

Between:

Canadian Friends Of Cuban Jewry (the Organization)
891822249RR0001

And

Canada Revenue Agency (the CRA)

During an audit of the Organization's books and records conducted by the CRA on October 6, 2010, the following areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* were identified:

Areas of Non-Compliance

1. Devotion of Resources to Charitable Activities

According to the *Income Tax Act* a registered charity can only use its resources (for example—funds, personnel, and property) in two ways, whether inside or outside Canada:

- It can make gifts to other organizations that are qualified donees as set out in the Act. Qualified donees include Canadian registered charities, certain universities outside Canada as listed in Schedule VIII of the Regulations to the Act, the United Nations and its agencies, and a few foreign charities.
- It can carry on its own charitable activities. (those which are directly under the charity's control and supervision, and for which it can account for any funds expended). In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

A charity usually carries on its activities using its staff (including volunteers, directors, or employees), or through an intermediary (for example—an agent or contractor). However, when using an intermediary or volunteers, it must still direct and control the use of its resources, although it may generally delegate authority to make day-to-day operating decisions. A charity cannot merely be a conduit to funnel money to an organization that is not a qualified donee.

The Act reinforces this requirement in paragraph 149.1(2)(b), by authorizing the Minister to revoke the registration of a charity if it fails to make required expenditures on charitable activities carried on by it and by way of gifts to qualified donees.

Audit Findings

As per Canadian Friends Of Cuban Jewry's Information Returns, the primary activity of the Organization is to provide basic religious needs for the Jewish community in Cuba.

The purpose of the Organisation as per the registered documents is to visit Cuba on a regular basis and to create a spirit of awareness among the Cuban Jews. The Organization needs young rabbis to officiate at religious services to explain the various festivals, to teach the young and old to read the prayer book and the various religious laws.

It was found during the audit that the Organization transferred funds to different volunteers located in Cuba, New York Argentina and Brooklyn.

As per the president of the Organization M. Aisenbach, money transferred was to be used to buy material and equipment for the activities in Cuba as well as to buy airplane tickets

The Organization failed to provide copies of the full and complete financial information relating to its programs along with other documentation that enable the Organization to show that it has devoted its resources to its own charitable activities.

There were no financial reports of expenditures summaries, copies of invoices and receipts submitted during the audit to document the use of the funds transferred to the volunteers.

The documentation provided to support the Organization's charitable foreign programs consisted of pictures, brochures and a Magazine article describing activities being carried out by the Organization.

The Organization did not provide CRA with any evidence of the internal decision making mechanisms or records to show that it directed and controlled any activities in Cuba.

Due to lack of proper documentation the Charity failed to demonstrate that it is in fact devoting all of its resources to its own charitable activities. It is the Charity's responsibility to ensure that when funds are expended, sufficient documentation is obtained in order to enable the CRA to verify that the funds were spent on charitable activities.

2. **Failure to maintain adequate Books & Records:**

Pursuant to paragraph 230(2)(a) of the ITA, every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister.

Books and records must enable the CRA to determine the following:

- whether a charity's funds are being spent on its own activities or on gifts to qualified donees
- whether the charity is directing and controlling the use of its resources
- whether there are any grounds for revocation of its registration under this ITA

The audit disclosed the following deficiencies:

- a. Withdrawals from the various bank accounts were not properly supported as to the use of funds.
- b. The director was unable to provide adequate books and records to support the Charity's expenditures on foreign programs and purchases.

3. **Providing a personal benefit to a Member of the Charity**

Subsection 149.1(1) of the Act requires a charitable foundation to be "constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or otherwise available for the personal benefit of any proprietor, member, shareholder, trustee or settler thereof, and that is not a charitable organization."

Under the *Income Tax Act*, a registered charity that confers on a director / trustee an undue benefit is liable to a penalty equal to 105% of the amount of the benefit. This penalty increases to 110% and the suspension of tax-receipting privileges for a repeat infraction within 5 years.

The following items were identified as a personal benefit:

- Rental fees paid by the Organization for the president's house
- Personal home telephone service

- Electricity expenditures paid to [REDACTED]
- Cellular phone ([REDACTED] fees)

4. Other non compliance:

a) Registered Charity Information Return T3010A

As per line 2100 of T3010 A, the Organization did not carry on programs, directly or indirectly outside Canada.

Audit Findings

The audit has revealed that the Organization's charitable program were carried on outside Canada..

The Organization wishes to rectify all identified areas of non-compliance on a voluntary basis. The CRA is prepared to provide the Organization with an opportunity to do so. For this purpose, the parties agree that the Organization shall implement the following corrective measures:

Corrective Measures

1) Devotion of Resources to Charitable Activities

The Organization will maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada, and will maintain and make available to the CRA upon request, books and records to allow the CRA to verify that all of the charity's resources have been used for its own activities.

To this end, the Organization will provide CRA with the following information:

- detailed description of the activity
- how the activity will be carried out
- the activity's overall goals
- the area or region where the activity is carried out
- who benefits from the activity
- what goods and services the charity's money will buy
- when the activity will begin and end
- Internal decision making mechanisms or records to show that it directed and controlled any activities.
- the amount of resources involved
- the nature of the resources being transferred

- detailed reports on the use of the charity's resources, which the charity reviews.
- list of volunteers

2) **Failure to maintain adequate Books & Records:**

- The Organization will maintain financial reports, copies of invoices and receipts to document the use of the funds transferred to the volunteers
- The Organization will provide copies of invoices and receipts To support Withdrawals and purchases

The books and records maintained will allow the CRA to verify that all of the charity's resources have been used for its own charitable activities

3) **Providing a personal benefit to a Member of the Charity**

No part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder or trustee

4) **Registered Charity Information return -T3010A**

Line 2100 of T3010A should be checked off as "yes"

Date of Implementation of all Corrective Measures

The Organization shall implement all corrective measures, on or before June 14, 2012.

By signing below, the parties certify that they have read, understood, and agree to, the terms of this Compliance Agreement. The Organization further acknowledges that should it fail to implement all corrective measures in accordance with the terms of this Compliance Agreement, the Minister of National Revenue (the Minister) may apply the penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". The Minister may, by registered mail, also give notice that the Minister proposes 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.

[REDACTED] [REDACTED]
Organization per: Authorized Signatory with [REDACTED] Witness

the authority to bind the Organization

Director of CFCJ

Name and position of signatory
(please print)

[REDACTED] Name of witness (please print)

Canadian Friends of Cuban Jewry

[REDACTED] Full name and address of Organization

Date of signing:

10 April 12, 2011

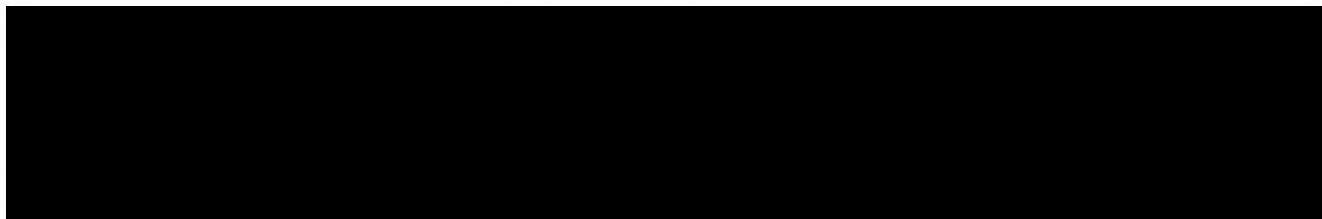
[REDACTED] **CRA per:**

RACHELLE METELLUS — AUDITOR

Name and position of signatory
(please print)

Date of signing:

March 14, 2011



November 15, 2021

Canada Revenue Agency
Lysa D. Borland [REDACTED]
Audit Division
East Central Ontario Tax Services Office – Peterborough

VIA FAX (705-876-6422)

Dear Ms. Borland

Re: Audit of Canadian Friends of Cuban Jewry (the “Charity” or “Organization”)
Business Number: 891822249
Your File #: 1006485
Our File #: m2844

We are in receipt of your letter dated June 17, 2021, ostensibly reviewing the operations of the above-named charitable organization. As you know we have been authorized to respond on behalf of the Charity.

The audit of any organization is, of course, contextual and it requires an understanding of the organization's operations. Without this understanding, how could an auditor make sense of a group's activities. Unfortunately, it is clear that this understanding is missing from your analysis and thus the audit itself is, respectfully, fatally flawed.

Chabad

We begin with a review of the Chabad movement. Chabad (also called Chabad-Lubavitch or Lubavitch) is first and foremost a strand of thought within Judaism. It is a branch of what is known as 'Chassidism'. For about 200 years it was primarily interpreted by the leader or Rebbe, the last leader having passed away in 2004 in Brooklyn, New York. Over time, adherents to this understanding of Judaism developed into a movement with its headquarters in Brooklyn.

One of the central tenets of the movement is to reach out to other members of the Jewish faith anywhere in the world and provide them with, not only religious guidance, but with the means for religious observance. In the case of Judaism, this does not only involve the provision of things like prayer books, Torahs, candles - but also with the food necessary for specific holidays and more generally for kosher food.

Adherents of the Chabad philosophy have set up organizations all over the world to pursue this work, including many in Canada. The Canadian Friends of Cuban Jewry is such a “branch”. It is a branch



in the sense that the managers and directors of the Organization are adherents to the Chabad philosophy and promote Jewish observance to the Jewish community of Cuba.

The Charity maintains close relations with the central office of Chabad in Brooklyn and draws from their spiritual guidance and a ready source of volunteers prepared to pursue the same religious objectives, governed by the same well understood rules for doing so.

Those individuals, men and women, that pursue the religious mission of the Chabad movement do so for religious purposes and not for any financial motive. Indeed, many of the men and women who engage in this activity are forced to make enormous personal sacrifices in order to engage in what they deem to be holy work.

Like missionary groups, engaging in this work in the field, the Charity must contend with the situation on the ground in Cuba including a communist system, a third world level of organization, a different business culture, a different language, American sanctions against the island, and immense shortages. In Cuba, for this particular Charity, there is the additional difficulty of finding volunteers who understand Chabad Judaism, speak Spanish, are legally allowed to go to Cuba, and willing to do so.

With this background, we can now provide contextual answers to the issues you have raised in your letter.

Control and Direction

The Organization recognizes the need for control and direction on the distribution of its charitable assets. In order to ensure that the items went towards the appropriate causes, the Organization solicited young men as volunteers to go to Cuba from the central office of Chabad in Brooklyn. From a practical perspective, this was the only logical place to find a group of Spanish speaking, religiously observant people that not only understood the Charity's mission, but would zealously pursue and protect its mission to the utmost.

These individuals had no intention of otherwise going to Cuba and as a matter of religious edict would not attend the beaches or social life, but rather would only go to Cuba in order to fill this religious mission. To be clear, these were volunteers of the Charity. When the Charity entrusted them with its assets for pursuit of the charitable mission, there was no transfer of assets to the volunteers rather the volunteers were custodians of the charitable assets in Cuba. This is true whether the assets were shipped to Cuba and met there by the volunteers, were brought into Cuba directly by the volunteers or purchased in Cuba by them.

You have made certain assumptions within your letter that the volunteers might be able to somehow use the assets which were brought into Cuba. It should be noted that many of the items brought into Cuba could only be used for religious purposes. Examples would include a shofar (a ram's horn), a ritual shawl, ceremonial candles, prayerbooks, or phylacteries. A transfer of any of these items to a non-qualified donee would clearly fall under the CRA's charitable goods policy.

Many of the other products you assume were transferred to volunteers would generally be useless to the religious young men who volunteered for this work. Frankly, as foreigners in the communist country the risk to them of engaging in underground or capitalist behaviour to sell things like women's clothing or food is absurd. Such behaviour would have resulted in their immediate arrest – which never happened. In the first place there was no transfer of title in the goods to the volunteers, but moreover the Charity was entitled to rely on the legal restrictions in place in both religious law, and Cuban law that ensured the distribution of the assets to those in need of them.

Finally, the Organization knows that the volunteers engaged in the distribution of these items because it has video and photographic evidence. We are sending along with this letter a USB key with those confirmations.

You have also asked for information on the identity of the volunteers. That would seem to be unnecessary for the purposes of the audit, we would be prepared to provide it, but would appreciate an explanation as to why it is necessary.

Legal Mechanisms

As mentioned earlier, the Charity and its volunteers are all adherents of Orthodox Judaism (the Chabad philosophy is mostly esoteric and for practical commercial purposes does not differ from the bulk of the rest of Orthodox observance). Jewish law contains a number of legal restrictions to ensure that the volunteers acted only at the behest of the Charity. Moreover, there are actual, effective, mechanisms of punishment if they do not as administered by Jewish courts. There is no question of control and direction being exercised through this parallel system of law and punishment.

The need for books and records is necessary to show the CRA proof of control and direction. But neither the Act nor CRA's own guidance specifies that we cannot show Jewish law as a means of providing appropriate controls. Should you wish further information on the religious laws which were used to ensure control and direction, we would be happy to provide this material to you.

Expenditures

On page 10 of your letter, you have discussed various expenses of the Charity. One element of the Organization's operations which we neglected to describe earlier (as it aligns more appropriately in this section) is the depth of personal involvement the individual directors of various Chabad "houses" have with its operations. Most of the Rabbis involved in these activities (and their families) are assigned these causes by senior Rabbis as their own personal mission. They are responsible for fundraising and for the operations of the Organization. [REDACTED] Aisenbach is no exception.

The [REDACTED] and his family house the charitable operations within their own residence. As we understand, fully half the home is taken up with the activities of the charity serving as the storehouse for items that have been collected for the poor in Cuba as well as the Organization's books and records. It is in this context that the expenses for things like rent and hydro can be understood as being expenses of the Organization. While we recognize that the Organization could provide or perhaps should have records for its utility costs and rental information, we do not have those

available to us yet. We will be pleased to provide them to you when we have them. But the expenses incurred for rent and for hydro are certainly in the realm of reasonable for a dwelling in Midtown Toronto.

We trust that our explanations of the Organization's operations now help explain the expenses relating both to motor vehicle and to flights to New York. With respect to motor vehicle expenses as the Organization's base of operations is Mr. Aisenbach's home, the use of the car and maintenance for business of the charity is completely valid. While again from a technical perspective we understand the need for a travel log to indicate the various percentages to allocate between personal and charitable use, the overall expense (being) attributed to charitable is entirely reasonable for car, gas and repairs for the use of an organization. Indeed, that level of expense is probably a third of what most people spend on a motor vehicle in a year.

You cited that the flights to New York have been unexplained to you. Clearly, the need for volunteers from Chabad headquarters was never made clear. We trust that the explanation has now been made.

We understand that no documentation was provided to show how the purchase of groceries supported the Organization's charitable purposes, and so some context might be necessary. Cuba is effectively a third world country. The supply of food there is weak. The Charity buys what food it can in Cuba, but brings kosher food to the island. The food there is then given to the poor. While some may be consumed by the volunteers as well (they will only eat kosher food which is hardly available in Cuba), this is completely valid as it is a direct expense of the Charity in conducting its work.

To our understanding, the CRA does not require that the poor sign a receipt for being given aid. We have always found this particular allowance by the CRA to be a nod to the dignity of the poor. But if you insist on the recipients of aid signifying their receipt of the aid, please direct us to the CRA guidance making this requirement and we will make arrangements to begin such operations.

Loan

We failed to understand your point about the loan. You state that the Charity repaid an outstanding loan in FYE 2015, but that the financial statement and the T3010 return for that year did not show an outstanding loan. If the loan was repaid in 2015 why would the financial statement and the T3010 show the outstanding loan. If you could please clarify for us your concerns, we would be please to answer them.

Other Expenditures

We understand and agree with your points about the expenditures of the Organization relating to the ATM withdrawals and debit card cashback. Clearly, a charity must be able to show that it is using its resources properly. However, CRA understands that many charities operate in parts of the world that do not have the same types of financial systems as we do here. Clearly, Cuba is such a country. The organization needs to operate in cash in Cuba. Indeed the ATM withdrawals are coincidental with the travels of the volunteers and most often the withdrawals took place at the airport prior to

the travels. Obviously, even the issuance of receipts is not a common occurrence there. For an organization that distributes as much aid as it does in a communist country of minimal sophistication, it would seem to be a reasonable set of expenditures to do the work that it does. We would be open to discuss with CRA what sort of proof can be provided on the expenditure of cash in Cuba in order to accomplish its charitable objects given the circumstances it faces.

Private Benefit Law

With respect, your use of the term private benefits is inaccurate. A private benefit, as distinct from a public benefit, is a problem for a group's charitable status. If you believe that the Organization was not set up to benefit an appreciable segment of the public then it is lacking the public benefit requirement. You have not raised it at this point and so we believe you use a private benefit is really meant to refer to an undue benefit.

An undue benefit is defined in the Act and essentially means a benefit given to a certain individual without fair market value of goods and services return. As [REDACTED] Aisenbach is clearly engaged day and night in the conduct of this charity, it would seem to be fairly easy to present reasons why there are no undue benefits present here. Indeed, the amount [REDACTED] Aisenbach draws from his role with the Charity represents only a very small portion of his time working for it.

But we would appreciate if you could please clarify your concerns in this regard so that we may properly answer them.

Book and Records

As we were not counsel for the charity at the time of the audit, we are not entirely certain what happened at the time of the audit. We have been informed that a great deal of books and records were available either at the accountant's office or at the organization's base of operations. We would be happy to forward whatever information you like, but would request only that you perhaps help us outline the nature of the documentation required so that this matter can be settled.

We are also sending to you copies of the Charity's list of expenses for each year. We understand you have copies of the actual receipts and so we have not included them but we can resend them if necessary. These are significant books and records of the group's control over its resources and pursuit of charitable activities.

Receipting

Again, we were not counsel for the charity at the time of the audit and so your reference to certain communication at that time is unknown to us. However, the Organization does have documentation relating to the receipts of donations and the issuance of donations receipt. Again, if you could perhaps outline for us what would be necessary, we would be prepared to seek this information from the accountant's office or from our client.

T3010

The Organization takes the issuance of the T3010 as an important responsibility. It provided the documents for the T3010 to an external accountant in order that the organization's responsibilities could be made by professional standards. Your audit shows that perhaps this was not done to the standard expected and so the Organization is grateful to have received this feedback.

It should be understood that the Organization itself does not have the internal expertise necessary to determine if the complicated, and technically rigorous, T3010 was properly prepared. It did its best to ensure that and we would submit it under the guidelines for the application of intermediate sanctions this matter would appropriately fall within a compliance agreement.

With respect to comments about the T1235 document. We would suggest that there may have been a miscommunication during the audit that the two directors were not involved. In fact, the individuals are legal directors of the charity. We could double-check the residential addresses for them to determine whether or not that is correct but nevertheless they are actual legal directors of the organization and in this respect at least the document is correct.

T4/T4A

Your points about the T4 and T4A documents are well taken. While we understand that the CRA position is that the T4 documents speak to the Organization's legal responsibility for maintaining appropriate books and records, they are clearly not part of the Organization's operation as a charity.

Notwithstanding any difficulties in the issuance of the T4 documents, [REDACTED] Aisenbach and his spouse have ensured to pay all of the necessary taxes.

We would further point that revoking a charitable organization for a promise of the T4/T4A is to impose a higher standard on a charity than on a non-charity for the same offence. Clearly, a for-profit business does not lose its ability to do business simply because of a problem with a T4 or T4A. Under the circumstances, this would be more appropriately dealt with by way of education letter or compliance agreement.

If you do proceed with its revocation on these grounds, we will take the position at Court that the CRA's position on this amount of procedure unfairness and that the CRA should not be revoking on this basis for any reason.

Conclusion

Some Canadian charities are large corporations with sophisticated mechanisms to ensure that they are in legal compliance. Other charities are small operations that do their best to comply with the technical requirements, and do a tremendous amount of good amidst huge personal costs. What drives these organizations and what drives the Canadian Friends of Jewry Cuban is the desire to help their fellows.

[REDACTED] Aisenbach is personally distraught over the accusation that he is has, in any way, taken benefit from the charity. In fact, he has contributed far more to it than he has ever been compensated. He and his family take it as a personal and religious mission to support the Jews of Cuba and go to great lengths to do so in any way they can.

This is not an organization that is an appropriate candidate for revocation. This organization should be encouraged to gain further compliance, but given a chance to do so.

We look forward to hearing from you.

Yours truly,

[REDACTED]

Encl.

Accrual Basis

Canadian Friends of Cuban Jewry
Total expenses by payee
January 1 through December 30, 2015

	TOTAL
airport parking	4,000.00
	35.87
	1,408.24
	32.17
	253.50
	1,228.32
	31.00
	249.61
	500.00
	48.00
	27.00
	29.58
	400.87
	21.50
	29.05
	294.99
	21.06
	12,000.00
	2,665.75
	103.70
	113.00
	3.00
	219.91
	832.00
	2,000.00
	33.90
	45.19
	150.79
	83.10
	496.20
	4,642.37
	10.00
	5,100.60
	35.56
	908.48
	59.42
	27.00
	29.27
	6.52
	146.89
	118.39
	1,833.36
	116.25
	3,203.55
	9,091.00
	107.21
	47.57
	9.86
	28.88
	277.15
	8.00
	62.15
	3,979.03
	46.02
	7.90
	831.66
	82.20
	2,728.36
	631.02
	20.01
	4,258.00
	34.71
	559.40
	5,200.00
	92.66
	240.00

Accrual Basis

Canadian Friends of Cuban Jewry
Total expenses by payee
January 1 through December 30, 2015

	<u>TOTAL</u>
	34.00
	201.09
	20.00
	144.03
	45.20
	171.49
	6,800.00
	1,170.68
	62.15
	4.51
	2,325.71
	14.93
	10.00
	1,014.02
	25.98
	16.33
	76.22
	69.78
	5.65
	11.25
	92.18
	711.61
	417.85
	81.22
	42.58
	253.57
	5.07
	931.22
	232.30
	218.09
	198.79
	52.92
	1,000.00
	0.00
TOTAL	88,398.17

Accrual Basis

Canadian Friends of Cuban Jewry
Total expenses by payee
January 1 through December 30, 2016

	TOTAL
	186.07
	45.00
	570.00
	3,164.00
	50.84
	369.00
	670.00
	25.00
	979.73
	2,546.00
	339.00
	87.20
	67.79
	1,655.56
	1,683.70
	73.05
	1,250.00
	79.00
	1,000.00
	306.92
	19.21
	195.49
	20.00
	150.00
	10.00
	150.00
	2,318.74
	428.50
	22.57
	41.97
	758.15
	35.39
	785.08
	10.16
	84.00
	42.00
	16.95
	240.95
	2,251.35
	500.00
	8.56
	45.09
	573.30
	93.55
	27.75
	465.86
	995.22
	179.85
	14,995.39
	14,555.84
	160.68
	111.56
	30.10
	20.00
	2,042.00
	3,022.89
	288.15
	37.51
	2,818.31
	22.84
	138.39
	568.84
	62.71
	8,686.40
	309.93
	56.50

Accrual Basis

Canadian Friends of Cuban Jewry
Total expenses by payee
January 1 through December 30, 2016

	<u>TOTAL</u>
	2,945.96
	5.00
	764.67
	25.99
	230.00
	505.00
	57.28
	45.20
	41.31
	278.89
	15.00
	36.00
	381.00
	25.54
	1,232.68
	818.66
	5,353.00
	45.20
TOTAL	<u>86,351.97</u>

Canadian Friends of Cuban Jewry

Comments on Representations

Background

Canadian Friends of Cuban Jewry (the Organization) was registered as a charitable organization in accordance with its Constitution and By-Laws effective July 7, 1994. The Organization's purpose is as follows:

To provide basic religious needs for the Jewish community in Cuba.

The Organization's activities at the time of registration were:

- Visiting Cuba on a regular basis to create a spirit awareness among Cuban Jews.
- To officiate at religious services, explain various Jewish festivals, teach young and old to read the prayer book and various religious laws.
- Distribute supplies used in religious parties for children and other activities of a religious nature.
- Distribute kosher food and explain its importance.

The registration was based on the information supplied by the Organization and on the understanding that it would be carrying out the activities listed in its application.

Previous non-compliance

In our administrative fairness letter (AFL) dated June 21, 2021, we explained that a previous audit of the Organization for the fiscal periods ending December 31, 2007, and December 31, 2008, identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations. The following areas of non-compliance were identified during the course of that audit:

- Failure to devote resources to charitable activities carried on by the Organization itself;
- Failure to maintain adequate books and records;
- Providing a personal benefit to a member of the Organization; and
- Inaccurate Form T3010, Registered Charity Information Return.

The CRA provided the Organization with an opportunity to resolve the above identified non-compliance through the implementation of a compliance agreement (copy attached). A compliance agreement was issued and signed by the Organization on April 12, 2011, acknowledging and agreeing to make the necessary corrective measures, thereby ensuring that the Organization was compliant with the Act and its Regulations.

By signing the compliance agreement, the Organization agreed to implement and adhere to the following corrective measures:

- maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada;
- maintain and make available books and records to allow the CRA to verify that all of its resources have been used for its own activities; and
- ensure that no part of its income is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder or trustee.

Current audit findings

The current audit was conducted as a follow up to the signed compliance agreement. As explained in our AFL, the current audit conducted by CRA for the period from January 1, 2015, to December 31, 2016, identified that the Organization had not implemented the corrective measures described in the compliance agreement, and identified new non-compliance issues. Based on the non-compliance identified during the two audits, it is our position that the Organization is not operating in compliance with the provisions of the Act in the following areas:

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failed to devote resources to charitable activities carried on by the Organization itself <ul style="list-style-type: none"> ○ Lack of direction and control over the use of resources / resourcing non-qualified donees 	149.1(1), 149.1(2), 168(1)(b)
2.	It is not constituted and operated for exclusively charitable purposes: <ul style="list-style-type: none"> ○ Delivery of non- incidental private benefits 	149.1(1), 149.1(2), 168(1)(b)
3.	Failed to maintain adequate books and records	149.1(2), 168(1)(e), 188.2(2)(a), 230(2), 230(4), 230(4.1)
4.	Failed to issue donation receipts in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), 188.2(2)(c), Regulations 3500 and 3501
5.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(2), 149.1(14), 168(1)(c), 188.1(6), 188.2(2.1), Regulation 200

We have reviewed and considered the Organization's representations in response to our AFL, dated November 15, 2021, and maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the Act. As a result of this

non-compliance, the Organization's registration as a charity should be revoked.

The areas of non-compliance with the provisions of the Act are described in detail below.

Identified areas of non-compliance

1. Failed to devote resources to charitable activities carried on by the Organization itself – Lack of direction and control over the use of resources / resourcing non-qualified donees

As stated in the AFL, it is our view that the Organization does not exercise the required degree of direction and control over the use of its funds, the resources it ships, or the activities conducted by volunteers and emissaries on its behalf, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act.

The audit revealed that funds totaling \$24,571.46 in FYE 2015, and \$19,373.73 in FYE 2016, were transferred to emissaries recruited by "Chabad-Lubavitch Headquarters" in New York. The Organization's Director has no knowledge of the identity of the emissaries that receive the Organization's financial assistance. As well, the majority of the emissary's activities were already being undertaken, bringing into question whether they are the Organization's activities or those of the emissaries.

Additionally, the audit revealed that supporters of the Organization would transport goods to Cuba personally, as well as in cargo containers, on behalf of the Organization. These goods were to be distributed by the Organization's emissaries in Cuba to individuals in need. However, due to the absence of adequate supporting documentation we were unable to determine whether the Organization maintained direction and control over those goods or over the conduct of the emissaries on its behalf. It is therefore CRA's position that the Organization's involvement in, and authority over, the conduct of any substantive activity is limited to providing funds to its emissaries. Given the absence of appropriately structured arrangements, such as intermediary agreements, establishing the Organization's necessary direction and control over its funds and purported activities, it appears that the Organization is funding non-qualified donees, which is contrary to the provisions of the Act.

Consequently, it appears that the Organization has not complied with the corrective measures identified in the 2011 compliance agreement, in that it has not devoted all of its resources to its own charitable activities or to gifting to qualified donees. Therefore, it has failed to meet the definitional requirements of subsections 149.1(1) and 149.1(2) of the Act. For this reason, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

The Organization's representations:

In its response to our AFL, the Organization (through its representative) stated that the CRA is incorrect in its conclusion and that the sole mission of individuals chosen by Chabad-Lubavitch headquarters in New York was to fulfil the Organization's religious mission. The Organization argued that there was no transfer of assets to these individuals - rather, they were the custodians

of the Organization's assets and regardless of whether the assets were shipped or purchased by them, the assets would all have been used for religious purposes.

The Organization stated further that the distribution of goods to those in need is/was governed by both religious law and Cuban law. The Organization added that the emissaries chosen by Chabad-Lubavitch headquarters were adherents of Orthodox Judaism and that Jewish law contains numerous legal restrictions to ensure that the emissaries act only at the behest of the Organization. As the Jewish courts have various mechanisms of punishment if the emissaries fail to act on the Organization's behalf, it was the Organization's position that direction and control was being exercised through this parallel system of law and punishment. While the Organization acknowledged that CRA required detailed books and records to demonstrate direction and control, it argued that neither the Act nor CRA's own guidance specifies that the Organization cannot rely on Jewish law as a means of providing the appropriate controls.

CRA's findings:

Apart from its stated position described above, the Organization failed to provide any new information or documentation in its response to our AFL. As such, it is the position of CRA that the Organization failed to demonstrate that it maintained the required degree of direction and control over the use of its funds, or over the activities conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act.

As stated in CRA's Guidance GC-002 "Canadian Registered Charities carrying on activities outside Canada", the Organization's purpose(s) and activities must always comply with Canadian charity law, including the Income Tax Act and common law. The notion that Jewish law in and of itself is an effective means of demonstrating direction and control is unsupported by the legislative environment within Canada.¹²³ Furthermore, the Organization's by-laws, signed on July 7, 1994, state that the Organization would keep accounting records in proper order according to the rules of accounting and also comply with all requirements of the Department of National Revenue (now known as the Canada Revenue Agency).

It therefore remains our position that the Organization has failed to devote all of its resources to its own charitable activities or to gifting to qualified donees. As such, the Organization has failed to meet the definitional requirements of subsections 149.1(1) and 149.1(2) of the Act and its charitable registration should be revoked in accordance with paragraph 168(1)(b) of the Act.

2. It is not constituted and operated for exclusively charitable purposes – Delivery of non- incidental private benefits

As described in the AFL, based on the available records there was no apparent division of expenses between those incurred on behalf of the Organization and those incurred personally by the Organization's sole director. Bank authorization of the Organization's resources was controlled exclusively by the sole director. During the audit, CRA reviewed expenditures totaling

¹ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] 2 CTC 93.

² Lepletot v MNR, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

³ Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

\$46,891.81 in 2015 and \$31,487.45 in 2016 that appeared to constitute a private benefit to the director. These expenses included rent, vehicle, air travel, perishable foods, repayment of a private loan, and cash withdrawals. The Organization failed to clarify why the identified expenses should not be considered a private benefit.⁴

CRA had raised the private benefit concerns in its previous audit and the Organization's director had agreed to adhere to the corrective measures outlined in the compliance agreement signed on April 12, 2011. In the aforementioned compliance agreement, the director specifically agreed to cease using the income of the Organization to fund his personal expenditures. Given the repeated and serious nature of the non-compliance identified in the current audit, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

The Organization's representations:

In its response, the Organization stated that the director's personal expenditures that were paid for by the Organization were charitable. The Organization argued that because the charitable activities had taken place within the director's personal residence, the claimed expenditures were justified. Regarding the director's personal vehicle expenses, the Organization argued that the expenses were reasonable, despite the acknowledgement that a travel log was not kept.

Regarding flight costs to New York and Cuba, the Organization maintained that the costs were charitable as the need to recruit Spanish speaking volunteers justified the expense. Regarding food sent to Cuba, the Organization argued that it is kosher food supplied to volunteers and the poor in Cuba, making the groceries purchased valid expenditures of the Organization.

Regarding CRA's concerns raised in the AFL related to the Organization's repayment of a loan in 2015, the Organization stated that it didn't understand CRA's concern, and requested that we provide clarity as to the need for additional information.

Regarding CRA's concerns raised in the AFL related to the Organization's multiple ATM cash withdrawals and debit card cash backs, the Organization stated that these transactions were reasonable given that Cuba operates primarily on a cash basis. The Organization commented further that the ATM withdrawals and debit card cash backs were made by the Organization prior to flying to Cuba. As receipts are not generally available in Cuba, and given the volume of aid the Organization provides in Cuba, these withdrawals should be considered reasonable.

In summary, it was the Organization's position that because the director was involved in the daily activities of the Organization, the amounts withdrawn were more than reasonable and represent a small portion of the director's time spent on the Organization's activities.

CRA's findings:

It is CRA's position that the Organization failed to acknowledge the apparent lack of division of expenses between those incurred on behalf of the Organization and those incurred for personal use. The Organization provided no additional information, other than to argue that the expenses incurred were reasonable. By paying for expenses, or providing advantages, that were not

⁴ "Personal benefit" is also sometimes used instead of "benefit" in the common law private benefit context.

apparently justified or necessary to perform required duties or to further a charitable purpose, and/or subsidizing unnecessary or unrelated travel, and/or permitting unjustified use of resources belonging to the Organization, it appears that the Organization provided an unacceptable private benefit⁵ to the director.

It is CRA's position that an organization which delivers an unacceptable private benefit is not using all of its resources for charitable purposes, and may have its registered status revoked. Given the repeated and serious nature of the non-compliance identified in the current audit, it remains CRA's position there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failed to Maintain Adequate Books and Records

As stated in the AFL, the Organization failed to maintain adequate books and records in all facets of its operations. The Organization was provided with an initial list of the books and records necessary for our review during the audit. However the Organization's director repeatedly delayed the audit process and provided unclear responses when CRA requested certain specific documentation. While the Organization provided CRA with a list of expenses, those expenses did not reconcile with those reported in the T3010 returns. CRA identified material discrepancies of \$83,613.45 in FYE 2015, and \$87,509.02 in FYE 2016. These discrepancies could not be explained by the Organization, nor did the provided source documents reconcile with the list of expenses and/or the T3010 returns. The Organization also failed to provide the accounting records for two fundraising events it holds yearly. Finally, the Organization's director confirmed that no structured arrangement exists between the Organization and its emissaries, and it is unclear if there was any correspondence between the Organization and its emissaries. Given that control of the Organization rests with its sole director, the lack of internal controls contributes to our concern that a large amount of the Organization's stated expenditures appear to be personal in nature.

Based on our review of the provided documentation, the Organization has not demonstrated that it maintained adequate books and records. As well, due to the minimal source documentation that was provided, we were unable to verify whether the Organization's resources were used in furtherance of its charitable purposes. The issue of inadequate books and records was also raised in the previous audit, and under paragraph 188.2(2)(a) of the Act, a charity may receive a notice of suspension of its authority to issue official donation receipts if it contravenes section 230 of the Act.

Given the Organization's failure to fulfill its requirement to maintain and make available adequate books and records⁶, as described above, along with its continued failure to comply with the corrective measures identified in the 2011 compliance agreement, it is our view that the present case constitutes repeated serious and material non-compliance. For this reason, there are

⁵ "Personal benefit" is also sometimes used instead of "benefit" in the common law private benefit context.

⁶ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at 39; See also Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, 2004 FCA 397.

grounds for revocation of the Organization's charitable status under paragraph 168(1)(e) of the Act.

The Organization's representations:

The Organization's representative advised CRA he was not the Organization's representative during the audit period and was therefore unable to comment regarding the inadequate books and records provided during the audit. He added that a great deal of the books and records were available at either the accountant's office or the director's residence and suggested that CRA elaborate as to the nature of the books and records required and he would forward them to CRA. He stated that the books and records provided during the audit were extensive and demonstrated the Organization's use of their resources in pursuit of its charitable activities. He provided a list of expenses that previously had been provided at the onset of the audit outlining the supplier and funds spent. He commented that, if required, the records previously reviewed would be resent for CRA's reference.

CRA's findings:

Based on our review of the books and records provided, the Organization has not demonstrated that it has maintained adequate books and records pursuant to section 230 of the Act. Further, due to minimal source documentation provided, CRA was unable to verify whether the Organization's resources were used in furtherance of its charitable purposes. The Organization was provided with a detailed list of the books and records required at the onset of the audit and when specific documents were requested, the director was unable to provide them. CRA had granted two extensions to the Organization totalling five months to obtain the requested information after the AFL had been issued and no new information was provided by either the Organization's representative or its director, despite the Organization's representative stating that the extensions were necessary to gather the missing documentation. The lack of new information, along with the suggestion by the Organization's representative to resubmit the source documents previously reviewed, suggests that no new information exists.

Given the Organization's failure to fulfill its requirement to maintain and make available adequate books and records, as described above, along with its continued failure to comply with the corrective measures identified in the 2011 compliance agreement, it is our view that the present case constitutes repeated serious and material non-compliance. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act⁷. The CRA remains of the position that the Organization has failed to meet the requirements of paragraph 168(1)(e) of the Act, and should have its charitable status revoked.

4. Failed to issue donation receipts in accordance with the Act and/or its Regulation

As stated in the AFL, the official donation receipts (ODR) provided by the Organization for review were examined and compared to amounts reported on line 4510 of the Organization's T3010 returns. This revealed a discrepancy of \$33,938 in FYE 2015, and \$33,865 in 2016. CRA

⁷ Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

was unable to verify the total amount of the ODRs, as the Organization did not provide sufficient documentation to validate the amounts.

At the onset of the audit, the Organization advised CRA that it publishes an annual magazine where individuals and businesses purchase quarter, half and full page ads. The Organization stated that ODRs were issued for the full cost of the ads that were published, as each ad was commemorating individuals who had made significant contributions to the Jewish community in Canada and in Israel. It is CRA's position that the ads that were purchased did not meet the legal definition of a gift in that the purchases were not made with the requisite donative intent.

CRA was also advised that the Organization held an annual Scotch and Cocktail dinner where the funds raised included proceeds from ticket sales, raffles and an auction. While CRA was informed that split receipting occurred for this event, no supporting documentation was provided, thereby preventing CRA from verifying the eligible amount for the ODRs issued.

Finally, the Organization stated that it also issued ODRs for cigars that were donated to the Organization. The invoices that were provided to support the valuations were in Cuban pesos, and while the Organization converted the amounts to Canadian dollars, the conversion rate used did not reconcile with the ODRs that were issued.

It is therefore CRA's position that the ODRs issued by the Organization were inaccurate and not issued in accordance with the Act and its Regulations. As such, there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

The Organization's representations:

In its response, the Organization's representative advised CRA that he was not counsel during the audit and as such was unable to comment or respond to the previous discussions and lack of documentation provided during the audit. He requested that CRA outline what would be necessary and he would seek to obtain the documentation from either the accountant's office or the director.

CRA's findings:

As the Organization was afforded five months to respond to our AFL, it is CRA's position that this should have been sufficient time to gather the required documentation and establish whether the Organization's ODRs were accurate. Repeated verbal and written requests were made during this time for the Organization to provide all accounting records for donations that had been received, as well as a detailed accounting of all magazine ads that had been purchased, and Scotch and Cigar Cocktail dinner fundraising events that had been held. The Organization's director was unable to provide the requested documentation, and stated that the ODRs already provided were sufficient for our review. As a result, CRA was unable to determine the accuracy of the split receipting that had occurred or the ODRs reported on the T3010 returns.

It is therefore CRA's position under paragraph 188.2(2)(c) of the Act that the Organization should receive a notice of suspension of its authority to issue official donation receipts as it was issuing ODRs that contained incorrect information. Further, based on the information and

documentation provided by the Organization, it is our view that ODRs were issued that were not in accordance with the Act and its Regulations, and there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

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

The audit revealed that the Organization failed to ensure that all financial information reported on the T3010 Information Returns, schedules and worksheets was factual and complete, pursuant to subsection 149.1(14) of the Act. The Organization inaccurately completed the following worksheets and schedules on its T3010 returns for the fiscal periods ending December 31, 2015, and December 31, 2016:

- Section C - Programs and General Information
- Section F - Confidential Data
- Schedule 2 - Activities outside Canada
- Schedule 5 - Gifts in Kind
- Schedule 6 – Detailed Financial Information
- T1235E – Directors/Trustee and Like Officials Worksheet
- Issuing Information returns for amounts paid T4/T4A

As stated in our AFL, the Organization incorrectly recorded both the physical address of the Organization and the location where the Organization's books and records were retained. The Organization failed to report expenditures it incurred on activities/projects carried on outside Canada, and it failed to report the total amount of tax receipted gifts in kind it had received. As well, the Organization failed to accurately report all types of revenue it had received, and failed to provide sufficient documentation to substantiate the expenses it reported in Schedule 6.

Additionally, while the director confirmed that both he and his spouse were in receipt of funds from the Organization for services rendered, the Organization failed to issue T4/T4A slips for those amounts. Finally, the Organization continued to disclose that two additional directors were part of the Organization, although they had no active role in the Organization since its inception.

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 CRA's position that the Organization has failed to comply with the Act by failing to file accurate T3010 returns. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

The Organization's representations:

While the Organization's representative acknowledged the importance of filing accurate T3010 returns, no additional explanation was provided, except to imply that the Organization's accountant was responsible for the errors identified during the audit. Regarding CRA's position that T4/T4A slips should have been issued for payments received by the Organization's director and his spouse, the representative argued that the director and his spouse had paid all necessary taxes and to consider revoking the Organization's status for this offence was to impose a higher

standard than that of a for-profit Organization. The representative argued further that the director and his family had made it their personal and religious mission to support Jews in Cuba and had contributed far more to the Organization's cause than what they had been compensated for.

CRA's findings:

During the audit, it was revealed that the Organization's director failed to disclose sufficient information to substantiate the reported revenue and expenses, thereby preventing the accountant from accurately completing the schedules and worksheets reported in the filed T3010 returns. The Organization's director had signing authority on the Organization's bank account and oversaw all of the Organization's activities. By signing the T3010 returns, the director certified to the best of his knowledge that the returns were factual and complete pursuant to subsection 149.1(14) of the Act. As such, it is our view that placing blame on the Organization's accountant for the reporting inaccuracies appears to have been unfounded.

In any case, as stated in the AFL, the books and records provided during the audit were inadequate, as CRA could not substantiate the revenue and expenses reported on the T3010. This same concern was also part of the corrective measures outlined in the compliance agreement signed on April 12, 2011. As a result, the present case constitutes repeated serious and material non-compliance.

It is therefore our position that the Organization has failed to comply with the Act and/or its Regulations by failing to file accurate T3010 information returns as required. Under paragraph 168(1)(c) of the Act, it is CRA's position that the registration of the Organization should be revoked as it has repeatedly failed to file information returns pursuant to subsection 149.1(14) of the Act.

Conclusion

For each and all of the reasons above, as well as those stated in the AFL, the registered status of the Organization should be revoked under paragraph 168(1)(b); 168(1)(c); 168(1)(d) and 168(1)(e) 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

$$\mathbf{A} - \mathbf{B}$$

where

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

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

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

$$\mathbf{A} - \mathbf{B}$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

189 (6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

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

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

189 (6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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