



PROTECTED B

April 18, 2024

REGISTERED MAIL

Keith Attoe
Trustee/Chair/Settlor
The Attoe Foundation
119 Prideaux St. Box 1003
Niagara-On-The-Lake ON L0S 1J0

BN: 863702528RR0001

Case number: 82121541

Dear Keith Attoe:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated January 12, 2023 (copy enclosed), in which The Attoe Foundation (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2018 to December 31, 2020. Specifically, the Foundation was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have reviewed and considered your written response that was date stamped by Canada Post on February 9, 2023¹. Your reply has not alleviated our concerns with respect to the Foundation'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 Foundation is not complying with the requirements set out in the Act. In particular, it was found that the Foundation failed to maintain adequate books and records, insofar as no records were submitted to allow the CRA to verify use of resources, income, expenditures and donations. The Foundation also failed to file complete and accurate charity information returns as and when required to by the Act and/or its Regulations. Lastly, the Foundation failed to demonstrate that its resources were used for charitable purposes, as no records were provided to substantiate that it carried on any charitable activities in furtherance of any charitable purpose. This non-compliance constitutes a serious breach of the fundamental requirements for registration. For these reasons, it is our position that the Foundation no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated January 12, 2023, and pursuant to subsections 168(1) and 149.1(4) of the Act, we hereby notify you of our

¹ The representation is not dated. The envelope was dated stamped February 9, 2023 and was received by the CRA officer in Scarborough on February 13, 2023

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

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(e), subsection 149.1(4) and paragraphs 149.1(4)(b) and (b.1) 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
863702528RR0001

Name
The Attoe Foundation
Niagara-On-The-Lake ON

As noted in our letter dated January 12, 2023, we informed you that the CRA may revoke the charitable registration of the Foundation. We further informed you that the CRA may, after the expiration of 30 days from the date of the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and on the date of that publication, the Foundation's registration would be revoked.

After considering the Foundation's response, this letter is to inform you that the CRA has decided to issue a notice of intention to revoke the Foundation's registration and will publish a copy of the notice in the *Canada Gazette* immediately after the expiration of **30 days** from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act. It was found that the Foundation demonstrated a serious breach of the fundamental requirements for registration, and as such, should be revoked immediately.

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

Assistant Commissioner
Appeals Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y OE9

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

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

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 Foundation 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 Foundation 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 Foundation 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 Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Foundation may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities that may result in significant changes in how the Foundation calculates its Goods and Services Tax/Harmonized Sales Tax (GST/HST) to be collected, input tax credits, and rebate entitlements. If you have any questions about your GST/HST obligations and entitlements, please go to canada.ca/gst-hst or call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

² Unless an order from the FCA is issued extending the 30-day period, the Minister may publish the notice of revocation in the *Canada Gazette* after the 30-day period has elapsed.

Reminder

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

Yours sincerely,

Sharmila P. Khare

Sharmila Khare
Director General
Charities Directorate

Enclosures

- CRA letter dated January 12, 2023
- Foundation's representations received February 13, 2023
- Appendix A, Comments on representation
- Appendix B, Relevant provisions of the Act

c.c.: David Attoe
Trustee



January 12, 2023

Keith Attoe
Trustee/Chair/Settlor
Attoe Foundation
119 Prideaux St. Box 1003
Niagara On The-Lake ON L0S 1J0

BN: 863702528RR0001
File #: 3014458
Case number: 82121541

Dear Keith Attoe:

Subject: Audit of The Attoe Foundation

This letter results from the audit of the Attoe Foundation conducted by the Canada Revenue Agency (CRA) and the request for the Voluntary Revocation submitted by the Foundation. The audit related to the operations of the Foundation for the period from January 1, 2018, to December 31, 2020.¹

Voluntary Revocation Request

We acknowledge that in letters dated January 4, 2022 and May 3, 2022 the Foundation requested voluntary revocation of its charitable status, stating that it no longer had the physical or financial resources to continue to operate.

A registered charity may request that its charitable status be voluntarily revoked, however, the granting of voluntary revocation is a discretionary process on the part of the CRA. Based on our audit findings, it is our current opinion that voluntary revocation is not a suitable resolution to the audit, and the Foundation's request will not be granted at this time.

During the audit, 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 maintain adequate books and records	149.1(4), 168(1)(b), 168(1)(e) 230(2), 230(4), 230(4.1)
2.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(4), 149.1(14), 168(1)(c)
3.	Failed to devote resources to charitable activities a) Failed to meet disbursement quota	149.1(4), 168(1)(b)

¹ The original audit period was January 1, 2018 to December 31, 2019. By way of our letter dated October 27, 2021, the Foundation was informed that the audit would include the return filed for the period ending December 31, 2020. The Foundation also filed a request for a voluntary revocation.

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 Foundation an opportunity to respond and present additional information and explain why its registered status should not be revoked. The Foundation 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 Income Tax Act, Canadian law requires that an organization demonstrate that it is constituted and operated exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.² To be exclusively charitable, a purpose must fall within one or more of the following four categories, also known as heads of charity,³ and deliver a public benefit:

- (1) the relief of poverty;
- (2) the advancement of religion;
- (3) the advancement of education; and
- (4) other purposes beneficial to the community as a whole in a way which the law regards as charitable.

An organization's purposes must fall within one or more of these categories to be considered for registration as a charity. The formal purposes as set out in an organization's governing document must be clear and precise so as to reflect exclusively charitable purposes.

The public benefit requirement involves a two-part test:

² See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

³ The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes as including "the disbursement of funds to qualified donees." The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC). The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v Minister of National Revenue*, [1967] SCR 133, and confirmed in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable.
 - Benefits may be measurable or intangible. Benefits that are not tangible or objectively measurable should be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.⁴ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved.⁵ An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁶
- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
 - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s);
or
 - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁷

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 Foundation'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.⁸

⁴ For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test. See also generally *British Columbia (Assessor of Area #09 - Vancouver) v Arts Umbrella*, 2008 BCCA 103; and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

⁵ For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test, and CRA Guidance CG-019, How to draft purposes for charitable registration. See also; *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) at 583.

⁶ *Co-operative College of Canada v. Saskatchewan (Human Rights Commission)*, 1975 CanLII 808 (SKCA) at para 19; *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 202; For more information about charitable purposes see CRA Guidance CG-019, How to draft purposes for charitable registration at para 19.

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

⁸ *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 69.

Background Information

The Foundation was registered as a private foundation effective April 24, 2000. The original governing document was a deed of trust dated April 24, 2000.

Two amending deeds of trust were submitted to the CRA, dated August 15, 2002 and March 12, 2004. According to our records, the March 12, 2004 deed of trust is the most current deed.

The purpose of the trust as described in paragraph 4 of the March 12, 2004 deed of trust is:

"Subject to paragraph 5 of this Deed of Trust, the Trustees shall solicit and receive and stand possessed of the capital and income of the Trust Fund and shall invest and keep the same invested and shall pay out use and apply all or any part of the Trust Fund from time to time...exclusively charities registered under the Income Tax Act of Canada."

Paragraph 5 of the Deed of Trust discusses the termination of the trust.

While we recognize the purpose of the Foundation is charitable, the CRA must be satisfied that the Foundation's activities directly further charitable purposes in a manner permitted by the Act. In making our determination, we are obliged to take into account all relevant information, including the Foundation's books and records. Our consideration of both purpose and activities must be based on current legislation, court decisions and the Charities Directorate policies and procedures.

Identified areas of non-compliance**1. Failure to Maintain Adequate Books and Records**

Subsection 230(2) of the Act requires that every registered charity shall maintain adequate records⁹ 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 the revocation of its registration under this Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it; and

⁹ Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

- (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.

This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act, as well as ensuring the CRA can verify the accuracy of reported information through an audit and determine whether there are any grounds for revocation of the charity's registration.

Subsection 231.1(1) of the Act permits an authorized person to inspect, audit, or examine the books and records of a taxpayer, as well as any document of the taxpayer, or of any other person that relates, or may relate, to the information that is, or should be, contained in the books and records of the taxpayer, or to any amount payable by the taxpayer under the Act.

In order to meet these requirements, a charity's books and records must allow the CRA to verify the charity's revenues and expenses, as well as any official donation receipts it may have issued. Further, the Act requires that a charity's records contain such information to allow the CRA to determine whether the charity's activities continue to be charitable at law.

Subsection 230(4) also states that 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 period as is prescribed; and
- (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records¹⁰ of account, at an address in Canada registered with the CRA, containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act.

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 prove that its charitable status should not be

¹⁰ Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

revoked.¹¹

- 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.¹²
- Paragraph 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., and the Federal Court of Appeal has determined that non-compliance with section 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.¹³
- The requirement to keep proper books and records is foundational and non-compliance with the requirement is serious and justifies revocation.¹⁴

While paragraph 230(2)(a) of the Act does not explicitly set out the types of books and records that a registered charity is required to maintain, which could therefore lead to a technical failure to comply with the Act, given the significant privileges that flow from registration as a private foundation under the Act, the Minister must be able to monitor the continuing entitlement of registered charities to those privileges. 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, 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.¹⁵

Audit Findings

Correspondence dated June 23, 2021 was mailed to the Foundation that included an audit engagement letter, a pre-audit list of records required for the original audit period and an audit questionnaire (engagement correspondence).

Prior to responding to the auditor's engagement correspondence, the Foundation filed amended returns for December 31, 2018, and 2019, along with an original and an amended return for December 31, 2020. The Foundation did not advise the auditor of the amendments prior to them being sent to the Summerside Taxation Centre. Generally, during an audit, if amendments are requested or required, they are submitted through the auditor so that they can be reviewed as part of the audit.

¹¹ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

¹² Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act. See also The Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, 2004 FCA 397.

¹³ 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.

¹⁴ 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.

¹⁵ Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

The Foundation mailed in representation to the June 23, 2021 engagement correspondence, which was received on October 7, 2021.

This reply included a cover letter, handwritten responses to some of the items listed on the pre-audit list of records and handwritten responses on the audit questionnaire.

Although requested in the June 23, 2021 correspondence, no supporting documentation or books and records were included in the Foundation's representation. Further, the response indicated that in some cases, there were no records; the response to question G13 requesting documentation to support the amounts donated to qualified donees was "none".

The Foundation was issued a follow up letter dated October 27, 2021 that informed the Foundation that the audit period had been expanded to include the return for the period ending December 31, 2020, and to provide all the supporting documentation to support the amounts reported on that return, along with the amended returns. In addition, the October 27, 2021, letter requested responses to additional queries; additional books and records and to provide the books and records that were not included in the first representation. This letter also asked the Foundation to confirm that there was no supporting documentation for the donations identified as being made to qualified donees and that it was Keith Attoe that made the donations.

Prior to responding to the October 27, 2021 letter, the Foundation filed a return for the period ending December 31, 2021; information for 2022 and a voluntary revocation request. These documents were submitted directly to the Summerside Taxation Centre.

The Foundation responded to the October 27, 2021 letter with representation which was received on January 26, 2022. Documentation provided was related to the amounts reported on the Qualified Donee worksheet (form T1236), and an investment statement dated April to June 2021, which is after the audit period. No other books and records or supporting documentation have been provided.

The Foundation has failed to provide the requested documentation and all its books and records. See section 3 below regarding the information relating to form T1236 Gifts to Qualified Donee Worksheet. In addition to a lack of books and records, the Foundation has not fully or adequately answered all the queries posed to it, and in some cases provided contradictory responses to our queries.

Table 1 in section 2 below summarizes the Foundation's charity information returns.

The Foundation was asked to provide documentation to support the amounts reported on its T3010 charity information returns for:

a) Assets

The Foundation was asked to provide documentation and an explanation for the \$3,698 reported on Line 4100 "Cash, bank accounts, short-term investments", along with any other assets, including loan receivables and investments.

The initial response was that the Foundation did not have a bank account during the audit period, but that it would provide the account number for its [REDACTED] account and the date the account was closed. This information was not provided. As a result, we were unable to verify whether the Foundation had a bank account during the audit period, and what the balance, if any, should have been reported on line 4100 of the T3010 returns.

When asked for an explanation regarding the \$3,698 being reported on the returns for many years going back to the period ending December 31, 2010 (see appendix A), the response was: "I kept the bank number on the financial static as I was funding the foundation personally. With hindsight I should or could have offset with a loan".

With no supporting documentation made available, it is evident that the Foundation did not have "cash, bank accounts or short-term investments" of \$3,698.

b) Liabilities

As noted in Table 1 below, and in Appendix A, the Foundation reported amounts on line 4300 Accounts payable and accrued liabilities.

In the engagement questionnaire, the Foundation was asked to explain why it changed the way it had reported its liability from 2013, where it was reported as a positive amount, to 2014-2019, where it was reported as a negative amount.

The explanation received was "see prior period adjustment and amended return". Included with this were amended returns that changed the reporting of the liability from negative to positive, in addition to changing the amount of the reported liabilities. No other explanation was provided.

In the follow up query letter of October 27, 2021, the Foundation was asked to provide an explanation why it changed the amounts and sign of the liabilities to a positive amount in each year.

The response provided was "The liability was recorded as a negative amount as the assignment was not fully recorded. The assignment surpassed the negative amount."

This representation does not explain why the amounts were originally filed on the original return or the rationale for the amendments.

Further, in our letter of October 27, 2021, the Foundation was asked to provide the purpose of the loaned funds and to provide supporting documentation. The Foundation has not provided any supporting documentation or information regarding the amounts it has identified as loans.

We also note that there was no change to the reported assets or expenses that would indicate a use for these loaned funds. There is no indication that the funds, if there were loans, were used for any charitable activity.

c) Revenue

As noted in Table 1 and Appendix A, the Foundation reported \$203,400 as "Other revenue" on line 4650 or as "Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts at lines 4575 and 4630)" on line 4530. The T3010 returns and the financial statements referred to this revenue as "assigned revenue" or "assignment of revenue".

Although requested, the Foundation did not provide any documentation to support the amounts reported for revenue during the audit.

In the engagement correspondence, the Foundation was asked to provide an explanation why it changed reporting the \$203,400 from "Other revenue" to "Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts at lines 4575 and 4630)" on the December 31, 2018, and December 31, 2019, the response was "seemed more appropriate".

When requested for an explanation why it seems more appropriate in the October 27, 2021 letter, the response per the January 26, 2022, representation was "The organization did not receive any cash in the amount of \$203,400 but rather an assigned amount by journal entry" and "It seems like the amount was more related to a gift than income although I'm not sure of the relevance nuance". In the same representation, Keith Attoe indicated "...I assigned my practice as a loan rather than a donation", in addition to indicating that it was "The gross revenue that was assigned".

The Foundation has been asked to provide all journal entries with details on the \$203,400 and books and records to support the reported revenue, but no journal entries or books and records have been provided.

From the representations, it is evident that the Foundation at no point received the actual amount of \$203,400. A review of the change in the reported liabilities, both the original and the amended amounts, shows the \$203,400 does not flow through the balance sheet.

We would note that if the \$203,400 does represent a loan, and as noted, no documentation or information has been presented to support this, then no amount should have been reported in the revenue section of the T3010 charity information returns. Further, although an adequate description of the reported revenue has not been provided, it does have some of the characteristics of a pledge – an amount to be provided later. If this is the case, then again, no amount should have been reported in the revenue section of the returns.

Although he is the purported source of the reported revenue, Keith Attoe is unable to accurately describe what the revenue is. It is unclear from the representations and the charity information returns exactly what the \$203,400 is and whether it is in fact revenue that needs to be reported.

Further, as the Foundation has consistently used the term “assigned”, first with respect to the reported revenue of \$203,400 and then with the donations, the Foundation was asked to provide a definition of this term and an explanation as to how this term was being used in the context of the Foundation.

The Foundation did not provide a definition for “assigned” or an explanation to how this term relates to the amounts reported on the charity information returns and/or the financial statements.

Per the response to the October 27, 2021, query letter, the Foundation indicated that the explanation of “assigned” was included in the note to the T3010 returns, but this note simply indicated that “Effective December 31, 2011, Keith Attoe assigned his interest in all economic benefit in his consulting services relating to the exploration and development of a potash deposit at [REDACTED]”. Copies of the notes are in Appendix B.

The note did not define the term “assigned” nor did it explain how it related to the Foundation.

Furthermore, no supporting documentation was provided with respect to this assigned revenue and no documentation was provided with respect to the interest related to the consulting business.

d) Trustee Meeting Minutes

The Foundation was asked to provide copies of all trustee meeting minutes since the start of the trust.

The Foundation indicated that it did not maintain trustee meeting minutes, and none were provided during the audit. As a result, it is not possible to determine:

- i) if the Foundation was following all the requirements of its March 12, 2004 deed of trust, which is a requirement of registration;

- ii) who the trustees were during the audit period;
- iii) that it carried out any charitable or non-charitable activities or
- iv) that it had non-charitable purposes.

e) Benefits – Private and/or Undue

The Foundation's representation is that its assets, liabilities and revenue are associated with, or are connected to, Keith Attoe, a trustee and a settlor of the trust.

A registered charity must be able to demonstrate that it did not infer a benefit, private or undue, upon any of its trustees or others. Due to the lack of adequate books and records and that there is an inadequate system of internal controls, the Foundation is unable to demonstrate that no benefits were provided to Keith Attoe or others.

f) Disbursement Quota

The disbursement quota is the minimum amount a registered charity must annually spend on either its own activities or as gifts to qualified donees. A registered charity is required to maintain books and records that will allow the Canada Revenue Agency to determine whether a registered charity has met its disbursement quota.

As the Foundation has not maintained adequate books and records and is unable to substantiate any of the amounts reported on the T310 charity information returns, the CRA is unable to determine whether the Foundation has met its disbursement quota.

g) Incurred debts other than for acceptable purposes

Since June 1, 1950, private foundations are not allowed to have 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.

Based on the information reported on the charity information returns, the Foundation did incur debt; however, no documentation has been provided to support any of the reported amounts. As a result, it is not possible to determine whether the Foundation in fact incurred any debts, and if it did, whether the debts were incurred for an allowable purpose.

The books and records of the Foundation are considered inadequate as it is unable to substantiate any of the amounts reported on the charity information returns filed during the audit period; it is unable to demonstrate that it was meeting the requirements of its March 12, 2004 deed of trust; unable to demonstrate that it carried out any charitable activities or that it engaged in any non-charitable activities; that it was organized exclusively for charitable purposes; that no benefits were provided.; that it was meeting its disbursement quota or that it incurred debts for acceptable purposes.

Accordingly, it is our view that the Foundation has failed to meet the requirements of subsection 230(2) of the Act. A Foundation that fails to maintain adequate books and records of account may have its registered charity status revoked. As such, there are grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(e) of the Act.

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

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 a charity to ensure that the information provided in its Form T3010, Registered Charity Information Return, 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 a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a T3010 are a sufficient basis for revocation.¹⁶

Audit Findings

The T3010 charity information returns, both original and amended, filed by the Foundation for the audit period contained errors/omissions and material misrepresentations. Table 1 below summarizes the filed returns for the periods January 1, 2018, to December 31, 2021, along with the information submitted for 2022. Appendix A provides a historical summary of the Foundation's filed returns. Appendix B contains the notes that were included with the amended returns for 2018-2020, along with the note included with December 31, 2021, return and included with the information provided for 2022.

¹⁶ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51.

Table 1: Charity Information Returns Summary

Return for fiscal period ending:		2022 Period	2021-12-31	2020-12-31	2019-12-31	2018-12-31
Cash, bank accounts, short-term investments	4100		\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698
Amount included in lines 4150, 4155, 4160, 4165 and 4170 not used in charitable programs	4250				\$ -	-\$1,598,193
Accounts payable and accrued liabilities - per amended returns	4300			\$3,284,857	\$3,497,607	\$3,690,207
Accounts payable and accrued liabilities - per original returns	4300		\$3,146,655	-\$2,993,543	-\$1,790,793	-\$1,598,193
Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts at lines 4575 and 4630)	4530				\$ 203,400	\$ 203,400
Other revenue not already included in the amounts above	4650	\$3,144,426	\$ 203,400	\$ 203,400		
Interest and bank charges	4820		\$ 54,398			
Total Charitable	5000				\$ 800	\$ 800
Total Other	5040		\$ 800	\$ 650		
Total expenditures (as reported on the T3010)			\$ 800	\$ 650	\$ 800	\$ 800

Both Section D (financial information) and Schedule 6 (detailed financial information) were completed on all returns for the period January 1, 2018, to December 31, 2021, as well as on the information submitted for 2022; however, based on the reported revenue, only Schedule 6 should have been completed.

a) Charity Information Returns for the periods ending December 31, 2018, 2019 and 2020

No amounts were reported on the balance sheet for non-arm's length amounts on the 2018 to 2020 returns: line 4320 – Amounts owing-non arm's length persons or line 4110 – Amounts receivable from non-arm's length party. Based on the representations made, all the loans were with and likely to Keith Attoe, a non-arm's length party. Due to the lack of books and records, we were unable to determine the i) amounts, or ii) which line(s) these amounts should be reported on.

Amounts were reported on the Qualified Donee Worksheet, but no corresponding amounts were reported on line 5050.

The Foundation is following the accrual method of accounting, but both Section D and Schedule 6 filed with the 2019 amended return, and Section D on the 2018 amended return, indicate that the cash method was used. Section D on the 2020 original return also indicates cash, while the appropriate box on the amended return, line 4020 was blank.

There are three names listed on the directors/trustee worksheet (Form 1235) filed with the December 31, 2018 return: Keith Attoe, David Attoe and Linda Attoe; however, the start and end date for David Attoe and Linda Attoe are the same, January 1, 2018, indicating they were trustees for one day. Per the representation, the trustees resigned at the year end. It appears form T1235 is in error. There were no trustee meeting minutes to verify who were the trustees in any of the years.

b) Financial statements

The Foundation filed financial statements with the original and the amended returns. There were no notes filed with the original returns, while the amended returns contained a new note. See appendix B for the notes. Regarding the statements:

The Statement of Expenses filed on the original returns for 2018 to 2020 contained the line "Excess of Expenditures over Revenues"; however, per the reported information, the revenues exceeded the expenses. In addition, although the amended returns contained financial statements marked as "amended", they also all contain this statement, "Excess of Expenditures over Revenues", even though the reported revenue exceeded the reported expenses.

All the financial statements, including both the original and amended for 2019 and 2020, identify the revenue as "Revenue Assignment of 2018 Income".

The amended balance sheet filed with the 2019 amended return, reports the loan payable as \$3,497,607, but Schedule 6 reported \$ -1,790,793 on line 4300.

The statement of expenses included with the 2020 original return is titled "For the year ended 2019".

c) Return and Financial Statement for December 31, 2021

Although outside of the audit period, we wish to note the following with respect to the return filed for the period ending December 31, 2021:

Question C3, "did the charity make gifts to qualified donees", is Marked "No", but the QD worksheet was completed. As a result, this question should have been marked "Yes".

Section D and Schedule 6 are both completed - based on the reported revenue, Schedule 6 was required to be completed.

The accounts payable is recorded on line 4300; however, based on the information provided, this is non-arm's length and should have been reported on line 4320. It should be noted in the CRA correspondence dated October 27, 2021, the proper method on reporting non-arm's length assets and liabilities was explained to the Foundation.

The balance sheet reports an amount for contributed surplus of \$5,288,400; however, it is unclear what is referred to as contributed surplus, as there are no shares.

The Statement of Expenses filed with 2021 return also contained the erroneous statement, "Excess of expenditures over revenue". It should be noted that this erroneous statement was identified to the Foundation in the engagement correspondence and the follow up query letter, both of which were received by the Foundation prior to the filing the return for the period ending December 31, 2021.

Although the assignment of the economic interest is reported to have started in 2011, and that amended returns were filed for 2018 to 2020, which changed the reporting of the liability to a positive amount, the return for the period ending December 31, 2021 was first to reference a loan and an interest rate. This is also the first return to report an amount for interest expense (\$54,308); however, it is unclear if the Foundation has actually paid this amount of interest. The Foundation had no resources to pay for this interest and there is no indication that this interest was accrued. As a result, this brings into question the accuracy of the amounts reported on the December 31, 2021 return.

The Foundation was unable to substantiate any of the figures reported on the returns for the audit period and as a result, it is unlikely that the amounts reported were accurate, which brings into question the reliability of the amounts reported on those returns. Furthermore, prior year returns were filed in a similar manner which suggest that those returns may also be inaccurate.

We note that all the returns were certified by Keith Attoe and from the information provided during the audit, he also prepared the financial statements. By certifying the returns, Keith Attoe is attesting that the information reported on the returns is correct and accurate. It is our position that the Foundation has not filed its charity information returns, including both the original and amended returns, accurately.

Under paragraph 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 or its Regulations. It is our view the Foundation has failed to comply with subsection 149.1(14) of the Act by failing to file an accurate T3010 return. For this reason, there are grounds to revoke the Foundation's charitable status.

3. Failure to devote resources to charitable activities

Subsection 149.1(1) of the Act defines a charitable foundation as:

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;

And, Subsection 149.1(4) reads

(4) 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 that are qualifying disbursements, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement, other than

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

(ii) a qualifying disbursement;

(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.

Audit Findings

The Foundation was registered to fund other registered charities (qualified donees). The qualified donee worksheets (form T1236) filed on the T3010 charity returns are summarized below.

2020	2019	2018	Name
\$ 500	\$600	\$ 600	Shaw Festival
	\$200	\$ 200	Kid's Help Line
\$ 100			YMCA Project Share Niagara Falls
\$ 50			March of Dimes
\$ 650	\$800	\$ 800	Total

In the response to Question A3 - How does the Organization accomplish its purpose - in the original audit questionnaire (engagement correspondence), the response was "Currently the organization has disbursed original funds & is on hold until funding". However, this response was contradicted by item 12 in the covering letter in the same

correspondence where Keith Attoe indicated that he paid for the donations and that in response to providing documentation to support the 2018 and 2019 gifts to qualified donees, the response was "none".

Although Keith Attoe indicated that there was no documentation available to support the amounts recorded on the 2018 and 2019 qualified donee worksheets, official donation receipts and other documentation were included in the materials provided in response to the October 27, 2021, query letter.

We would like to note the following with regard to the documentation provided:

- The official donation receipts provided for the Kids Help Phone in 2018 and 2019 were in the name of the Foundation. The amount in each year was \$101.25, and not the \$200.00 recorded on the QD worksheets;
- Receipts totaling \$679.50 were provided for 2019, but these items were not recorded on the December 31, 2019 Form T1236;
- For 2020 there appears to be donations in the name of the Foundation for the March of Dimes and the YWCA of Niagara; however, the copies of the documentation provided are of such poor quality that it is not possible to confirm the specific details, such as the amount or the charity registration number of recipient organizations; and
- Receipts totaling \$200.00 were provided for 2020, but these amounts were not recorded on the December 31, 2020, Form T1236.

Although there were receipts issued in the name of the Foundation, there was no documentation provided to substantiate that the Foundation made any of the donations itself or that donations were required to be made on its behalf. We acknowledge that it was indicated that donations were made on its behalf, or that donations were "assigned" as part of the representations, but no documentation has been provided to demonstrate that any of the amounts identified on the submitted documentation were incurred to further the Foundation's charitable purpose.

Some of the documentation shows that donations were made online and/or through CanadaHelps, an online platform; however, there was no documentation provided to demonstrate that the Foundation had made its own donations through CanadaHelps.

We would also like to note that as a registered charity, the Foundation should not be requesting official donation receipts. Official donation receipts are to be issued to individual and corporate donors, not registered charities.

A registered charity is able to carry out its charitable activities through an intermediary, but there must be documentary evidence to support any arrangement and that the

intermediary was acting on behalf of the registered charity. There has been no such documentation provided.

Based on the filed returns, the Foundation lacked any resources to make donations or to reimburse any parties for donations made on its behalf. Further, based on the large amount reported for its liability, the Foundation would never be able to repay any amounts that others incurred on its behalf.

Although outside of the audit period, we wish to comment on the documentation provided to support the four items listed on the Qualified Donee worksheet filed with the December 31, 2021 T3010 return:

The receipts for the Canada Helps, Gillian's Place (through Canada Helps) and Heritage Trail Donation are in the name of Keith and Linda Attoe, and not the Foundation. No documentation was provided with respect to the Shaw Festival for 2021. See below for information relating to the Shaw Festival and the previous years.

Shaw Festival

Amounts were recorded on the qualified donee worksheets filed for the December 31, 2018 to 2021 returns for the Shaw Festival (\$500 for 2021 and 2020 and \$600 for 2019 and 2018; however, for 2019, the amount should have been \$500). Note: no changes were made to the qualified donee worksheets on the amended returns. None of these amounts are considered gifts to a qualified donee of the Foundation because:

The supporting documentation was in the name of Linda Attoe and in some cases, the amount was paid using her personal credit card. The information shows that the amounts paid were for Linda Attoe's memberships to the Shaw festival and were not donations. We note that per the Shaw Festival's public information, members receive significant benefits. It is evident based on the supporting documentation that payments to the Shaw festival were for the personal activity of the trustee(s) and not for any charitable purpose.

Although there were some official donation receipts issued in the name of the Attoe Foundation this is insufficient to demonstrate that the Foundation itself made any of the donations using its own resources.

Further, Keith Attoe has indicated that he made the donations, but has not provided any documentation relating to any transactions between himself and the Foundation.

Per the filed charity information returns, and the responses provided to the audit questionnaire, the Foundation had no original funds left to gift to qualified donees or to cover any expenses.

For these reasons, it is the CRA's position that the Foundation has not carried out any charitable activities during the audit period and based on the information available, would also appear that no charitable activities were carried out in 2021.

Under Paragraph 149.1(4)(b.1), 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 fails to expend an amount on its own charitable activities or by way of gifts that are qualifying disbursements that is at least equal to its disbursement quota. For this reason, there are grounds for the Minister to revoke the Foundation's charitable status.

Other Items

During the course of our review, the following information regarding Keith Attoe was noted on public websites:

"A Chartered Accountant and Chartered Director, Mr. Attoe is a Director with APC. As a result of his work history and studies, Mr. Attoe is experienced in the areas of project management, structured products, derivatives and financial strategy. From 1986 to the present, Mr. Attoe has, as part of his consulting practice, provided domestic and international tax planning, estate planning, money management and corporate finance services to long term high net worth clients, as well as managing client funds. Mr. Attoe founded and managed The Attoe Foundation, a supporter of arts and mental health organizations in Canada. During his career, Mr. Attoe has experienced success in the areas of public market corporate finance, investment banking, tax planning, risk management and public accounting. During 1984, Mr. Attoe was co-director of a cash management comprehensive audit, conducted through the Office of the Auditor General of Canada, which resulted in annual savings of \$261 million. He also co-authored the first edition of the reference book, Cash Management in Canada, published by CCH Canada."¹⁷

"Keith Attoe, C.A., C. Dir. located in Niagara-on-the-Lake, ON, currently provides corporate finance and independent director services. Mr. Attoe also founded and manages The Attoe Foundation, a supporter of the Arts and Mental Health organizations in Canada...."¹⁸

Based on the trustee/director's worksheets, Keith Attoe was the only trustee for 2018 as well as for the period 2020 to present. During 2019, Keith Attoe was a trustee along with his spouse, Linda Attoe. However, as noted, the Foundation has not provided any trustee meeting minutes or decisions of the trustees to confirm this.

Keith Attoe signed the December 31, 2018 and the December 31, 2020 and 2021 returns as a trustee and a settlor and signed the December 31, 2019 as a trustee.

¹⁷ Per the website http://atlanticpotash.ca/about/project_team/index.html (viewed June 10, 2021)

¹⁸ <http://keithattoe.com/KeithAttoe/Welcome.html> (viewed May 14, 2021)

Based on Keith Attoe's extensive tax, auditing and accounting background, and his extensive involvement with the Foundation, a conclusion can be made that the errors and omissions on the returns were not the result of lack of experience or understanding. It is our position that Keith Attoe would know or would ought to have known how to accurately complete the T310 charity information returns; the requirements to maintain adequate books records; and to be able to produce such records for the purpose of an audit.

The Foundation's options:

a) Respond

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

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

b) Do not respond

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

The Act provides the Minister the discretion to revoke a charity's registration. Section 168 of the Act describes the manner in which the Minister may revoke a charity's registration. In accordance with subsection 168(1) of the Act, when proposing to revoke, the charity is given notice by registered mail of the Minister's intention to revoke the charity's registration. The charity's registration is not revoked until a copy of the notice is published in the *Canada Gazette*. Paragraph 168(2)(b) of the Act allows the Minister to publish the notice in the *Canada Gazette* any time after the expiration of 30 days from the date of the mailing of the notice.

After considering the Foundation's response to this letter, the Minister may decide to exercise her authority to revoke its charitable registration. If so, the Minister will issue a notice of intention to revoke the Foundation's registration and will indicate in the notice whether the Minister intends to publish the notice in the *Canada Gazette* immediately after the expiration of 30 days from the date of the mailing of the notice.

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

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers below. My team leader, Darsana Idema, may also be reached at 226-753-6648.

Yours sincerely,



James (Jim) Dozois
Income Tax Audit Division 1
GTA East TSO

Cell: 226-989-2520
Facsimile: 418-556-1819
Address: 200 Town Centre Court
Toronto, ON M1P 4Y3

Enclosures:

Appendix A: T3010 Filing History
Appendix B: Notes to Financial Statements

Appendix A: T3010 Filing History

Return for fiscal period ending:		2022	2021-12-31	2020-12-31	2019-12-31	2018-12-31	2017-12-31	2016-12-31	2015-12-31	2014-12-31	2013-12-31
Cash, bank accounts, short-term investments	4100		\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	
Amounts receivable-non arm's length persons	4110										
Amounts receivable from all others	4120										
Investment-non arm's length persons	4130										
Long-term investments	4140										
Total assets	4200	\$ -	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698	\$ 3,698
Amount included in lines 4150, 4155, 4160, 4165 and 4170 not used in charitable programs	4250				\$ -	-\$ 1,598,193	\$ -	\$ -	-\$ 989,993	-\$ 176,993	
Accounts payable and accrued liabilities	4300		\$ 3,146,655	\$ 3,284,857	\$ 3,497,607	\$ 3,690,207	-\$ 1,305,593	-\$ 1,192,793	-\$ 989,993	-\$ 176,993	\$ 26,407
Deferred revenue	4310										
Amounts owing-non arm's length persons	4320										
Other liabilities	4330										
Total liabilities	4350	\$ -	\$ 3,146,655	\$ 3,284,857	\$ 3,497,607	\$ 3,690,207	-\$ 1,305,593	-\$ 1,192,793	-\$ 989,993	-\$ 176,993	\$ -
Revenue											
Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts at lines 4575 and 4630)	4530				\$ 203,400	\$ 203,400					
Total interest and investment income received/ea	4580										
Net proceeds from disposition of assets (show negative with brackets)	4600										
Other revenue not already included in the amounts above	4650	\$ 3,144,426	\$ 203,400	\$ 203,400			\$ 203,400	\$ 203,400	\$ 813,600	\$ 203,400	
Total revenue		\$ 3,144,426	\$ 203,400	\$ 203,400	\$ 203,400	\$ 203,400	\$ 203,400	\$ 203,400	\$ 813,600	\$ 203,400	0
Return for fiscal period ending:		2022	2021-12-31	2020-12-31	2019-12-31	2018-12-31	2017-12-31	2016-12-31	2015-12-31	2014-12-31	2013-12-31*
Expenditure											
Interest and bank charges	4820		\$ 54,398								
Licenses, memberships, and dues	4830										
Office supplies and expenses	4840										
Occupancy costs	4850										
Professional and consulting fees	4860										
All other expenditures not included in the amounts above (excluding gifts to qualified	4920						\$ 600	\$ 600	\$ 600	\$ 600	\$ 600
Total expenditures before gifts to QD	4950	\$ -	\$ 54,398	\$ -	\$ -	\$ -	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600
Total Charitable	5000				\$ 800	\$ 800					
Total Management & Administrative	5010										
Total Fundraising	5020										
Total Other	5040		\$ 800	\$ 650							
Gifts to Qualified Donees	5050										
Total expenditures		\$ -	\$ 800	\$ 650	\$ 800	\$ 800	\$ -	\$ -			

The amounts reported for the accounts payable for 2018 to 2020 are from the amended returns. See Table 1 for the original figures.

The 2019 accounts payable is from the amended financial statements because the amended T3010 still reported a negative amount.

The information for this appendix is based on the information reported on the T301 charity information returns and/or the financial statements. If an amount was missing from the charity information return, the amount reported above was taken from the financial statements.

Return for fiscal period ending:		2012-12-31	2011-12-31	2010-12-31	2009-12-31	2008-12-31	2007-12-31	2006-12-31	2005-12-31	2004-12-31	2003-12-31
Cash, bank accounts, short-term investments	4100	3698	3698	\$ 3,698	\$ 7,160	\$ 38,827	\$ 180,651	\$ 223,862	\$ 35,182	\$ 36,254	\$ 92,419
Amounts receivable-non arm's length persons	4110								\$ 3,975	\$ 11,925	
Amounts receivable from all others	4120										\$ 431
Investment-non arm's length persons	4130									\$ 3,640	
Long-term investments	4140								\$ 265,000	\$ 265,000	\$ 359,829
Total assets	4200	\$ 3,698	\$ 3,698	\$ 3,698	\$ 7,160	\$ 38,827	\$ 180,651	\$ 223,862	\$ 304,157	\$ 316,819	\$ 452,679
Amount included in lines 4150, 4155, 4160, 4165 and 4170 not used in charitable programs	4250										
Accounts payable and accrued liabilities	4300	\$ 26,107	\$ 25,407	\$ 25,097	\$ 25,468	\$ 25,478	\$ 54,504	\$ 43,366	\$ 46,755	\$ 7,631	
Deferred revenue	4310										
Amounts owing-non arm's length persons	4320										\$ 37,584
Other liabilities	4330			\$ 10	\$ 10						
Total liabilities	4350	\$ 26,107	\$ 25,407	\$ 25,197	\$ 25,478		\$ 54,504	\$ 43,366	\$ 46,755	\$ 7,631	\$ 37,584
Revenue											
Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts at lines 4575 and 4630)	4530										
Total interest and investment income received/ea	4580				\$ 310	\$ 3,442	\$ 7,420	\$ 9,092	\$ 19,684	\$ 11,494	\$ 237
Net proceeds from disposition of assets (show negative with brackets)	4600									\$ 28,400	-\$ 107,563
Other revenue not already included in the amounts above	4650						\$ 24,440				\$ 39,855
Total revenue		0	0	\$ -	\$ 310		\$ 31,860	\$ 9,092		\$ 39,894	-\$ 67,471
Return for fiscal period ending:		2012-12-31	2011-12-31	2010-12-31	2009-12-31	2008-12-31	2007-12-31	2006-12-31	2005-12-31	2004-12-31	2003-12-31
Expenditure											
Interest and bank charges	4820										\$ 155
Licenses, memberships, and dues	4830									\$ 20,000	
Office supplies and expenses	4840					\$ 13,408	\$ 35,468	\$ 11,540	\$ 11,614		\$ 2,336
Occupancy costs	4850					\$ 12,600	\$ 12,600	\$ 10,726	\$ 7,850	\$ 7,200	\$ 3,773
Professional and consulting fees	4860							\$ 20,441	\$ 4,235		\$ 2,000
All other expenditures not included in the amounts above (excluding gifts to qualified donees)	4920			\$ 3,121		\$ 90,236	\$ 33,141	\$ 38,291	\$ 38,616	\$ 118,601	
Total expenditures before gifts to QD	4950	\$ -	\$ 3,121			\$ 116,244	\$ 81,209	\$ 80,998	\$ 62,315	\$ 145,801	\$ 8,264
0											
Total Charitable	5000										
Total Management & Administrative	5010										
Total Fundraising	5020										
Total Other	5040										
Gifts to Qualified Donees	5050	\$ 700	\$ 300				\$ 5,000	\$ 5,000	\$ 9,155		\$ 15,320
Total expenditures		\$ 700	\$ 300	\$ 3,121			\$ 86,209	\$ 85,998			

2004: other expenses is loss on investments

The information for the appendix is based on the information reported on the T301 charity information returns and/or the financial statements. If an amount was missing from the charity information return, the amount reported above was taken from the financial statements.

APPENDIX B: Notes to Financial Statements

There were no notes included on the financial statements filed with the December 31, 2018, December 31, 2019 or December 31, 2020 original T3010 returns.

The following note was included on both the amended financial statements filed with the amended returns for December 31, 2018, December 31, 2019 and December 31, 2020:

Effective December 31, 2011, Keith Attoe assigned his interest in any and all economic benefit in his consulting services relating to the exploration and development of a potash deposit at Millstream, NB. The anticipated time to complete the project is 26 years especially in light of the controls put surrounding Covid-19 by the provincial government in NB. Once the project is operational or goes public any bonus, severance or interest in the public company will be transferred to the Attoe Foundation. The current accounting treatment in the amended financial statements reflect this economic transfer.

The following note was included with the return filed for the period ending December 31, 2021:

Effective December 31, 2011, Keith Attoe assigned his interest in any and all economic benefit in his consulting services relating to the exploration and development of a potash deposit at [REDACTED]. The anticipated time to complete the project is 26 years especially in light of the controls put surrounding Covid-19 by the provincial government in NB. Once the project is operational or goes public any bonus, severance or interest in the public company will be transferred to the Attoe Foundation. The current accounting treatment in the amended financial statements reflect this economic transfer. Loan Payable bears an interest rate of 2.6% similar to the current mortgage rate.

Note: this is the first return that references a loan and an interest rate.

The following note was included on the financial statements included with the information for 2022:

Effective December 31, 2011, Keith Attoe assigned his interest in any and all economic benefit in his consulting services relating to the exploration and development of a potash deposit at [REDACTED]. The anticipated time to complete the project is 26 years especially in light of the controls put surrounding Covid-19 by the provincial government in NB. Once the project is operational or goes public any bonus, severance or interest in the public company will be transferred to the Attoe Foundation. The current accounting treatment in the amended financial statements reflect this economic transfer. Loan Payable bears an interest rate of 2.6% similar to the current mortgage rate.

Initially as a result of low potash prices and now with no relief in sight of the Covid pandemic, the trustee of the Attoe Foundation is voluntarily the charitable registration. The cash balance reduced the loan payable by journal entry. The final loan payable was written off as the Attoe Foundation does not have the financial resources to pay it off.

James (Jim Dozois)
Canada Revenue Agency
200 Town Centre Court
Toronto, ON M1P 4Y3

Dear Jim

After a treatment appointment at the [REDACTED] - [REDACTED]
[REDACTED] on Friday, January 20, 2023 I picked up your correspondence at the NOTL post office on
Saturday morning, January 21, 2023

My overall comment is that I expect the same consideration to be given to me as an auditee as
the CRA extends to its auditors. The CRA was informed of [REDACTED]
throughout 2022 with specific updates. I find it very arrogant to issue a 30 day letter within that
time frame irregardless of circumstance. Also, most letters have a 60 day not 30 day fuse. The
finalization of my [REDACTED] and
[REDACTED] Not sure myself what the
[REDACTED] will decide. If the tests do not clear up soon, [REDACTED]
[REDACTED]

Concurrent with my [REDACTED] As a result we
were needed in [REDACTED] and to drop off [REDACTED]
[REDACTED] and to pick them up at the end of the day. Her [REDACTED] are between
the [REDACTED] The CRA was aware of this matter.

At the outset of the audit, I more than once requested that the CRA auditor call on a CRA line
and record the call for archive. This request was refused. The reason for the request is that in a
previous audit the CRA wanted documentation that I supplied to them three times and each
time they lost the documentation. As well there were snide comments that I did not send them
the documents and was lying. In the end all the documentation surfaced within the
department after a period of at least six months. To minimize this type of problem I thought
then and still think now that it was and is a reasonable request.

As well, my intent to put my effort in the Millstream potash project into the Attoe Foundation
mirrors having done the same thing with shares in a dot com venture at the outset of the
Foundation. The shares were liquidated and the funds disbursed to registered charities. The
result of the Millstream project being put in the Foundation was a failure due to uncertainties
around the price of potash, the Covid shutdown and current volatility of the China/Canada
geopolitical situation. Things were not helped by the Ukraine /Russia war. As a result, I filed a
last form 3010 in January , 2022 and as at January, 2022.

Also, as the Attoe Foundation is an unincorporated entity, the Foundation does not need
government approval to cease operations. I expect the final 3010 return to be processed as of
the date received by the Agency. The reason that I requested CRA approval was to expedite

matters and I clearly stated this at the time of requesting the revocation. It was made very clear in writing to the CRA that the request for voluntary revocation was made to expedite matters not of necessity.

Accrual vs cash basis of accounting.

Can you mix accrual and cash accounting?(google search)

As the name suggests, the hybrid method is a mixture of the two. **Companies might report both cash income and accruals to help determine cash flow and budgeting for future months.** They can also use a hybrid method to help with inventory management and ordering supplies.

When to Use Hybrid Accounting Solutions - [REDACTED] Online
[REDACTED]

I considered the basis for accounting a hybrid method, resulting in noting on Form3010 the wrong box being checked as the third and proper choice was not available.

As far as the cut and paste descriptions of my efforts on various projects, I see no nexus on any of them to my expertise in not for profit/charity entities or for that matter reporting expertise being mentioned or implied. A better reference would be my LinkedIn account as it is more up to date. For the record my attention and or interests currently lie in the study of consciousness and its relation to machine learning and perhaps it's practical application for everyday use. We shall see how it works out.

As to the letter dated January 12, 2023 my comments are as follows:

1. As the Attoe Foundation had 2 to 3 transaction per year it is sufficient to record them with a journal entry. I disagree that the books and records were not adequate in this circumstance.
2. The Attoe Foundation filed its information returns as required by the Act/or its regulation. The information form once amended clearly outlined the activity of the Foundation. In fact, this letter demonstrates the CRA is fully aware of the Foundation's activity
3. The disbursement requirements were fully met. As the cash and near cash of the Foundation and only distributable asset was \$3,698 the donations were more than adequate to meet the Act's requirements.

The Foundation did not maintain a bank account or credit card as the low balance would have quickly eroded the cash balance. A credit card for the Foundation was not feasible. As a result, disbursements were made from my personal credit card or my wife's to facilitate the donation(s). This is the most prudent method to make donations in the circumstance.

Overall: During the period under question I worked consistently to enhance the value of the assigned asset in the Attoe Foundation. The failure of this initiative was a function of macro

economic factors well outside of my control. As a result, the Foundation filed its final form 3010 in January, 2022.

Based on the circumstances of this foundation I am requesting that the CRA recognize my final form 3010 filed in January 2022.

Yours Truly,

A solid black rectangular box used to redact the signature of Keith Attoe.

Keith Attoe

The Attoe Foundation
Comments on Representations

In our administrative fairness letter (AFL) dated January 12, 2023, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2018 to December 31, 2020, identified that The Attoe Foundation (the Foundation) is not operating in compliance with the provisions of the Income Tax Act (the Act) in the following areas:

1. Failed to maintain adequate books and records;
2. Failed to file an information return as and when required by the Act and/or its Regulations; and
3. Failed to devote resources to charitable activities: failed to meet the disbursement quota.

We have reviewed and considered the Foundation's representations of February 13, 2023, and we 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, the Foundation's registration as a charity should be revoked.

The basis for our position is described in detail below, including:

- a summary of the issues raised in our AFL dated January 12, 2023;
- a summary of the Foundation's representations received February 13, 2023 (the representations); and
- the CRA's response to the representations.

Identified areas of non-compliance

1. Failed to maintain adequate books and records

Our AFL detailed our various requests for the Foundation to provide their books and records during the course of the audit, along with a summary of the representations made with respect to those requests. The only source documentation we received from the Foundation was a brokerage statement that covered the period from April to June 2021, which was outside of the audit period, and documentation relating to Form 1236 - Qualified Donee Worksheet. No additional source documents or books were provided during this audit.

The Foundation's representations

In your response, you disagreed that the books and records were not adequate and indicated that as there were so few transactions for the period, it was sufficient to record them with a journal entry.

CRA's response

The representations provided throughout the audit have not alleviated our concerns with respect to the incomplete nature of the Foundation's books and records.

The Foundation failed to provide adequate documentation, and/or adequate explanations to substantiate any of the amounts reported on the T3010 Registered Charity Information Returns filed during the audit period. As a result, the CRA cannot confirm the accuracy of any of the reported information, including revenue and expenditures and donations.

No journal entries documenting the Foundation's financial transactions were provided during the audit or in your response. We would note that the Foundation was asked specifically to provide its journal entries in our correspondence dated October 27, 2021, to date, none have been provided. Nor did the Foundation provide any additional source documents or books and records to substantiate the amounts reported for assets, liabilities and revenue.

The Foundation failed to address our concerns that it incurred debt for non-allowable purposes or that no trustee meeting minutes or decisions of the trustees were provided.

The CRA is also unable to verify that the Foundation carried on any charitable activities in furtherance of any charitable purpose, as no records were provided to substantiate the use of their resources. Further, the Foundation was unable to demonstrate that it was meeting the requirements of its March 12, 2004 deed of trust, that it carried out any charitable activities, that it was organized exclusively for charitable purposes or that it was meeting its disbursement quota.

As a result, it remains our position that the Foundation has failed to maintain adequate books and records in accordance with the Act. For this reason, there are grounds for revocation of the Foundation's charitable status under paragraph 168(1)(e) of the Act.

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

As stated in our AFL, the Foundation filed Form T3010, Registered Charity Information Returns for the periods ending December 31, 2018, 2019 and 2020 (returns) along with amended returns for the same periods. Our letter also outlined errors and omissions with respect to the returns, amended returns and the financial statements filed. In addition, we included comments regarding the return filed for the period ending December 31, 2021.

The Foundation's representations

The Foundation stated that it filed its annual information returns and amended returns as required, and that its amended returns clearly outlined their activity.

Regarding the accounting method, the Foundation represented that it used a hybrid method (mix of accrual and cash) and included a link to an American university, along with examples of when an entity might use this method. Your letter also indicated that the wrong account method box on the T3010 was used as the proper choice (hybrid) was not available.

CRA's response

The Foundation's response to our AFL did not address our concerns with respect to the accuracy of the information reported on its returns.

The Foundation failed to provide any representations pertaining to amounts reported at Line 4100 - Cash, bank accounts, short-term investments, Line 4650 - Other Revenue, Line 4530 - Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts at lines 4575 and 4630), or Line 4300 - Accounts payable. In addition, the Foundation did not provide an adequate explanation for the change reported at Line 4300 - Accounts Payable from the original returns filed to the amended returns and no documentation has been provided to support either the original or amended amounts. Further, no information was provided to show how the amounts reported at line 4300 - Accounts payable related to the purposes of the Foundation and that no benefits were conferred on a person with respect to these amounts.

The Foundation's representations, provided throughout the audit, also did not address the issues we identified with the Directors/Trustees worksheet (Form T1235), the errors we noted on the financial statements or the fact that the accuracy and reliability of the information filed in the Foundation's returns were brought into question due to the errors and omissions identified on the returns before, during and after the audit period.

With regard to the accounting method used by the Foundation, your response to our AFL indicated that the Foundation was following a hybrid method of accounting and that the returns did not have a box to check to select a hybrid method. Conversely, we note that in the Foundation's response to our initial letter, and in its correspondence dated January 24, 2022, it indicated that it was following the accrual method of accounting which conflicts with the hybrid methodology explanation. Additionally, the notes to the financial statements filed with the amended returns (there were no notes filed with the financial statements included with the Original return) did not make any reference to a hybrid method.

Guidance provided on CRA's website states that financial reporting for registered charities can be done using either the cash basis method or the accrual basis method. Further, a registered charity must clearly demonstrate which option was used (cash or accrual) on their financial statements and that the same method was used throughout their information return.¹ As the audit was unable to conclude that the Foundation followed

¹ www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/financial-statements.html

either the cash or accrual methodology, and given the conflicting representation provided by the Foundation, the audit was unable to determine whether the Foundation met the requirements of the Act, in relation to verifying that substantially all resources were used for charitable activities in furtherance of charitable purposes.

The Foundation's response has failed to alleviate our concerns with respect to the accuracy of its returns. As a result, it remains our position that the CRA cannot conclude that the Foundation filed accurate information returns as and when required by the Act and/or its Regulations. For this reason, there are grounds for the revocation of the Foundation's charitable status under paragraph 168(1)(c) of the Act.

3. Failed to devote resources to charitable activities

a) Failed to meet disbursement quota

The Foundation was registered for the purpose of funding other qualified donees. As stated in our AFL, the Foundation reported gifts to qualified donees totalling \$800 in 2018, \$800 in 2019 and \$650 in 2020. Documentation was provided in response to a query where receipts did not match the reported amounts on the return, however the receipts were provided for amounts not recorded on the T1236 and receipts were of poor quality where details could not be confirmed. Although receipts were issued in the name of the Foundation, there was no documentation provided to substantiate that the Foundation made any of the donations.

The Foundation's representations

The Foundation represented that their disbursement requirements were fully met. Further, as the cash and near cash of the Foundation and only distributable asset was \$3,698, the donations were more than adequate to meet the requirements of the Act.

The Foundation indicated that since it did not maintain a bank account or credit card, disbursements were made from the credit card of [REDACTED]

CRA's response

The Foundation's response to our AFL did not address our concern that documentation was not provided to substantiate that the amounts identified as gifts to other registered charities were made in support of the Foundation's stated purpose and were not the personal donations of the trustees.

Although Keith Attoe had indicated that he made donations on behalf of the Foundation, there was no documentation provided to confirm that he or Linda Attoe were acting as intermediaries on behalf of the Foundation. Also, there was no documentation or information provided to show that these amounts were considered loans and that the Foundation was required to pay any amounts back to the Attoes.

The Foundation's response indicated that the \$3,698 was a distributable asset; however, no explanation or documentation was provided to confirm how this amount was determined or that it was an asset of the Foundation. The responses during the audit would indicate that the Foundation did not have an asset of \$3,698.

The Foundation's response did not address our concerns with respect to Linda Attie's personal memberships to the Shaw Festival that were reported on Form T1236.

The Foundation has failed to demonstrate that it expended any of its resources to further its own charitable activities in support of its stated purposes. As a result, it remains our position that the Foundation has failed to devote all of its resources to charitable activities, as required by the Act as a condition for charitable registration. For this reason, there are grounds for revocation of the Foundation's charitable status under paragraph 168(1)(b) of the Act.

4. Other

a) Voluntary Revocation

In response to our AFL, the Foundation stated that as an unincorporated entity, it does not need government approval to cease operations. While this may be correct, as we noted in our AFL with respect to granting a voluntary revocation of an entity's charitable status, this is at the discretion of the CRA. It remains our decision that based on the results of our audit, voluntary revocation is not a suitable outcome. Given the serious non-compliance identified as a result of the audit, the Foundation's failure to comply with the fundamental requirements of charitable registration, and the Foundation's inability to address the non-compliance identified as a result of the audit, the Foundation will be revoked for failure to meet the requirements for charitable registration.

b) Information (Return) filed for 2022

The Foundation submitted a Form T3010 for the period ending January 4, 2022. In its response to our AFL, the Foundation has indicated this filing represents its final return. Please note that January 4, 2022 is not a valid filing period end date for the Foundation, and as such, the return filed for this period will not be processed by the CRA. Please see Consequence B in the cover letter for additional information on returns to be filed after a revocation.

Conclusion

For the reasons outlined above and mentioned in our letter dated January 12, 2023, it is the CRA's position that the Foundation should have its registration as a charity revoked pursuant to subsections 168(1) and 149.1(4) of the Act.

Qualified Donees

149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

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

(ii) a municipality in Canada,

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

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

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

(b) a registered charity,

(b.1) a registered journalism organization,

(c) a registered Canadian amateur athletic association, or

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

149.1 (4) Revocation of registration of private foundation

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

(a) carries on any business;

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

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

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

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

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

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

149.1 (4.1) Revocation of registration of registered charity

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

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;
- (e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and
- (f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

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

168 (2) Revocation of Registration

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

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

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

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

168 (4) Objection to proposal or designation

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

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

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

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

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

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a

registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

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

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

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

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

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

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

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

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

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

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

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

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

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

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

A - B

where

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

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

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

188 (1.2) Winding-up period

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

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

188 (1.3) Eligible donee

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

(a) a registered charity

- (i) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity,
- (ii) that is not the subject of a suspension under subsection 188.2(1),
- (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
- (iv) that has filed all information returns required by subsection 149.1(14), and
- (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

188 (3) Transfer of property tax

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

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

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

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

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

188 (5) Definitions – In this section,

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

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

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

189 (6.1) Revoked charity to file returns

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

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

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

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

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

189 (6.2) Reduction of revocation tax liability

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

(a) the amount, if any, by which

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

exceeds

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

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

189 (6.3) Reduction of liability for penalties

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

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

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

189 (7) Minister may assess

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