



May 27, 2021

REGISTERED MAIL

██████ Pesach Sperlin
President
Shabad of Ottawa
████████████████████

BN: 893712984RR0001
File #: 0843714

Dear ██████ Pesach Sperlin:

**Subject: Notice of intention to revoke
Shabad of Ottawa**

We are writing with respect to our letter dated October 1, 2019 (copy enclosed), in which Shabad of Ottawa (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2016 to December 31, 2017. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

This most recent audit was conducted as a follow-up to a previous audit for the period from January 1, 2007 to December 31, 2008. This resulted in the Organization's representative signing a compliance agreement, in which it agreed to resolve the non-compliance identified during the previous audit. The compliance agreement was signed by ██████ Pesach Sperlin, the Organization's President and representative, on February 1, 2013.

During two telephone conversations on October 31, 2019, and November 1, 2019, respectively, the Organization's representative confirmed that no further information would be provided and that it would not be submitting any written representations in response to our letter of October 1, 2019. As of this date, we have not received any written response to our letter. As such, the concerns outlined in our letter have not been alleviated.

Audit Conclusion

The current audit by the CRA found that the Organization is not complying with the requirements set out in the Act. Notwithstanding the Organization's agreement to implement corrective measures to remedy the non-compliance identified in the previous audit, the current audit found evidence of serious and repeat non-compliance. In particular, it was found that the Organization failed to maintain adequate books and records, failed to devote resources to charitable activities, and that it is not constituted

and operated for exclusively charitable purposes. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated October 1, 2019, and pursuant to subsections 168(1) and 149.1(2) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, 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)(e), and subsection 149.1(2), of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

| | |
|------------------------|---------------------------------|
| Business number | Name |
| 893712984RR0001 | Shabad of Ottawa Montreal QC |

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

Assistant Commissioner
Appeals Branch
Canada Revenue Agency
13th Floor
250 Albert Street
Ottawa ON K1A 0L5

Should the Organization choose not to file an objection to this notice of intention to revoke with the CRA within this period, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of 90 days from the date this letter was mailed. As such, the Organization's registration will be revoked on the date of publication.

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

Consequences of revocation

As of the effective date of revocation:

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

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

Yours sincerely,



Tony Manconi
Director General
Charities Directorate

Enclosures

- CRA letter dated October 1, 2019.
- Appendix A, Relevant provisions of the Act.



October 1, 2019

██████ Pesach Sperlin
President
Shabad of Ottawa
████████████████████

BN: 893712984RR0001
File #: 0843714

Dear ██████ Pesach Sperlin:

Subject: Audit of Shabad of Ottawa

This letter results from the audit of the Shabad of Ottawa (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2016 to December 31, 2017.

The Organization was advised that the CRA 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. | Failure to maintain adequate books and records | 149.1(2), 168(1)(b), 168(1)(d) 168(1)(e) 188.2(2)(a) 230 Reg. 3501 Reg. 5800(1) |
| 2. | Failure to devote resources to charitable activities | 149.1(1), 149.1(2), 168(1)(b) |
| 3. | Failure to be constituted for exclusively charitable purposes | 149.1(2), 168(1)(b) |

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

General legal principles

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

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

The public benefit requirement involves a two-part test:

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

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

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

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary, and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

To summarize, the CRA must be satisfied that an organization's purposes are exclusively charitable in law, and that its activities directly further these charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information in order to assess its bona fides. Accordingly, the audit encompassed an enquiry into all aspects of the Organization's operations.

Background

The Organization was registered as a charitable organization effective February 22, 1989, with the following purposes:

- (a) To carry on a synagogue for religious services.
- (b) To undertake and pursue the advancement of religion and rituals.
- (c) To engage personnel in order to carry out the objectives.
- (d) To do all such things as are incidental or conducive to the attainment of the above objectives.
- (e) The teaching of remedial religious classes in English, French and Hebrew, concerning religious matters, including rituals performed in the Jewish faith.

While we recognize that the Organization's purposes is that with which it was originally registered, our consideration of both purpose and activities must be based on current legislation, court decisions, and Charities Directorate policies and procedures.

The Organization's Forms T3010, Registered Charity Information Return, for both the year ended 2016 and 2017 indicates that the Organization's current activities are to

provide guidance and counselling to university and high school students in the Ottawa area.

Previous non-compliance

An audit of the 2007 and 2008 fiscal years was completed on January 8, 2013. It resulted in a Compliance Agreement. The Compliance Agreement was signed February 7, 2013, by ██████ Pesach Sperlin, a board member of the Organization.

By signing the Compliance Agreement, the Organization indicated that it wanted to rectify all identified areas of non-compliance and would implement all corrective measures as outlined. Further, by signing the Compliance Agreement, the Organization certified that it read, understood, and agreed to, the terms of the Compliance Agreement. The Organization further acknowledged that should it fail to implement all corrective measures in accordance with the terms of the Compliance Agreement, the Minister of National Revenue (the Minister) may apply penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". The Minister may, by registered mail, also give notice that the Minister proposes to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

The February 7, 2013 Compliance Agreement addressed the following areas of non-compliance:

1. Failure to maintain proper books and records
 - There were no source documents to support the personnel, foreign students, which taught the Jewish religion and provided spiritual training on the Organization's behalf.
 - There were no source documents to support expenses paid for with an individual's personal credit card. Also, there were no source documents to support how the expenses paid related to the organization's activities.
 - There was no loan agreement to support a \$10,000 loan payment made.
2. Board of Directors
 - The organization did not have a minimum of three non-arm's length directors (as required by its own Constitution and By-laws).

The Corrective Measures as outlined by the February 7, 2013 Compliance Agreement were as follows:

Books and Records:

Effective immediately, the Organization will comply with subsection 230(2) of the Act. Therefore it will implement the following:

A) When the Organization engages personnel to help carry out its activities it will have

written agreements or contracts with each individual stating the work to be performed and the re-numeration to be paid by the Organization to that individual.

B) The Organization will have invoices to support any amounts charged to credit cards and it will have documentation to support how these expenses related to the Organization's activities.

C) When the Organization is involved in a loan transaction, either as the debtor or creditor, it will have a written loan agreement between the parties.

Board of Directors:

The Organization will, before March 31, 2013, have as a minimum, three non-arm's length directors, trustees, or like officials.

Request for voluntary revocation

We acknowledge that in a letter dated June 5, 2019, the Organization requested voluntary revocation of its charitable status, stating that it has decided to voluntarily cease the operations of the charity due to the death of its main fundraiser and treasurer.

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, as outlined below, voluntary revocation is not a suitable resolution, and the Organization's request will not be granted at this time. Specifically, due to the serious nature and repeated demonstration of non-compliance with respect to the maintenance of its books and records, we are proposing to revoke the Organization's registered status.

Identified areas of non-compliance

1. Failure to maintain adequate books and records

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records¹ 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 grounds for the revocation of its registration under the Act. Failure to maintain adequate books and records in accordance with the requirements of the Act is itself sufficient reason for the CRA to revoke an organization's charitable registration.²

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 any document of the taxpayer, or of any other person that relates, or may relate, to the information that is, or should be, contained

¹ 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 other thing containing information, whether in writing or in any other form."

² *College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of Customs and Revenue Agency)* 2004 FCA 101, and *Ark Angel Foundation v. Canada (National Revenue)* 2019 FCA 21

in the books and records of the taxpayer, or to any amount payable by the taxpayer under the Act.

Furthermore, the court has established in several cases that:

- the onus is on the registered charity to provide that its charitable status should not be revoked.³
- 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.⁴
- 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.⁵
- The requirement to keep proper books and records is foundational and non-compliance with the requirement is sufficient to justify revocation.⁶

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,⁷ given the significant privileges that flow from registration as a charitable organization under the Act, the Minister must be able to monitor the continuing entitlement of charitable organizations to those privileges. 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,⁸ 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.⁹

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 so as to allow the CRA to determine whether the charity's activities continue to be charitable at law.

As outlined below, the audit has identified a number of deficiencies with respect to the Organization's books and records. In some instances, the Organization either did not

³ The Canadian Committee for the Tel Aviv Foundation v. Canada 2002 FCA 72

⁴ *ibid.* See also The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada 2004 FCA 397

⁵ Opportunities for the Disabled Foundation v. Canada (National Revenue) 2016 FCA 94; and Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21

⁶ Jaamiah Al Uloom Al Islamiyyah Ontario v. Canada (National Revenue) 2016 FCA 49, paragraph 15; and Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43

⁷ Preseient Foundation v. Canada (National Revenue) 2013 FCA 120; and Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 37

⁸ Humane Society of Canada for the Protection of Animals and the Environment v. Canada (National Revenue) 2015 FCA 178, paragraph 80

⁹ Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43

maintain, or was unable to provide, books and records, and as such the CRA was not able to verify income, expenses, donations, and use of resources.

Audit Findings

For the period under audit, minimal audit testing could be performed due to the lack of records and source documents provided. Specifically, cash withdrawals could not be verified as no supporting documents were provided to confirm withdrawals of \$70,931 in 2016 and \$80,752 in 2017. Board meeting minutes were not maintained and therefore it was not possible to assess how the Organization was governed and/or who was involved in decision making regarding the Organization's activities and/or operations. Since the Organization operated in Montreal and that was where [REDACTED] Sperlin was located and could direct and manage the Organization's resources, it appears that the operations of the Organization was conducted solely by [REDACTED] Pesach Sperlin, with little to no oversight by a board of directors. No supporting documentation was provided which worked to demonstrate that any charitable activities were conducted for the period under audit. Overall, there was a significant lack of supporting documentation.

The books and records that were submitted for the audit were found to be incomplete. Specifically, in the 2016 fiscal year, 0.02% of expenses could be verified by source documents, and in the 2017 fiscal year, 7% of expenses were verified by source documents however, it was not apparent that any of the verified expenses were devoted to charitable activities working to advance exclusively charitable purposes.

Lack of Internal Controls

The audit also found that, there was no documentation to show that internal controls were in place. There was no evidence of segregation of duties: adequate authorization of transactions or adequate access restriction to resources and records of the Organization.

Lack of direction and control/Gifting to non-qualified donees

With respect to its purported programming, the Organization provided copies of contracts between students and itself, however, these documents were not signed by either party, did not itemize the charitable work to be performed by the students on behalf of the Organization and did not stipulate the amount of re-numeration to be paid for the work. The agreement appeared to be general in nature. Furthermore, the Organization did not provide a contract for every student that had received payment from the Organization.

The Organization indicated that there were 10 students that conducted work on behalf of the Organization in each of the fiscal years under audit. The audit found that foreign students received payment by way of bank draft from the [REDACTED] In the 2016 fiscal year, \$160,250 of the Organization's resources were devoted to paying students. This represented 70% of the total expenditures claimed in the 2016 year. In the 2017 fiscal year, \$95,034 was devoted to paying students and this represented 41% of the total expenses claimed.

[REDACTED] Sperlin advised that the Mr. Warshavsky had all of the signed contracts at his

residence in Ottawa, and they had since been discarded. [REDACTED] Sperlin did not provide any documentation or evidence of the charitable activity that was conducted by the students. Given the lack of supporting documentation, it appears as though the Organization gifted to non-qualified donees.

Further, as a result of the abovementioned, the audit found that the Organization did not comply with the corrective measures identified in the 2013 compliance agreement regarding maintaining agreements with personnel that provide services on its behalf. Specifically, the agreements were to contain the work to be performed and the remuneration to be paid by the Organization to the specified individual. As such, this constitutes material and repeated non-compliance.

Private Benefit

The audit also found that the following amounts were paid to [REDACTED] Sperlin's personal [REDACTED] account :

- 2016 fiscal year \$22,473, which amounted to about 10% of the total expenses claimed.
- 2017 fiscal year \$22,034, which amounted to about 10% of the total expenses claimed.

Due to the lack of expense receipts and invoices provided, the amounts paid to [REDACTED] Sperlin's [REDACTED] account could not be substantiated and we were unable to conclude that the above amounts related to the Organization's activities. Rather, it appears that the Organization may have conferred a private benefit to [REDACTED] Sperlin.

Further, as a result of the abovementioned, the audit found that the Organization did not comply with the corrective measures identified in the 2013 compliance agreement regarding maintaining invoices to support amounts charged to credit cards and further, maintaining documentation to support how such expenses relate to the Organization's activities. This constitutes material and repeated non-compliance.

Official Donations Receipts/Form T3010

The audit also found concerns with its official donation receipting and financial reporting practices. The Organization's official donation receipts submitted for audit purposes did not contain an authorized signature. Additionally, in the 2017 fiscal year the total amount of tax-receipted donations reported on line 4500 of its Form T3010 did not reconcile to the donation receipts on hand.

| | |
|--|------------------|
| Tax-receipted gifts - line 4500 | \$153,840 |
| Donations receipts submitted for audit | <u>\$261,500</u> |
| Difference | <u>\$107,660</u> |

The Organization was not able to provide information or documentation with respect to the abovementioned concerns identified with its receipting and reporting practices.

Board of directors

The Organization's Constitution and By-laws states the following:

"There will be a President whose duty is to function over the meetings. The Vice-President is to help the President in his function, serving as the head of the organization and to take his place in case of absence. The Secretary will handle all correspondence for the organization. The Treasurer will handle all the funds and do the banking for the organization."

One of the corrective measures identified in the 2013 compliance agreement was for the Organization to have three members on its Board of directors as per the requirement in its Constitution and By-laws. As per the Organization's 2016 and 2017 T3010s, the charity continued to operate with only two board members. The Organization did not maintain minutes for board meetings, therefore we were unable to confirm the addition of a third board member.

During the field visit for the current audit, ██████ Sperlin advised that there were three board members for the period under audit. He indicated that the third board member was ██████ and that the accountant forgot to include this board member on the Organization's Form, T1235. However, no supporting documentation was provided which worked to demonstrate that the Organization had added ██████ as a director and hence, that the Organization had three board members.

As a result of the abovementioned, the audit found that the Organization did not comply with the corrective measures identified in the 2013 compliance agreement regarding the composition of its Board of Directors.

For all of the above reasons, the Organization is in contravention of subsection 230(2) and Regulation 5800(1) of the Act, which includes retention of all source documents. As such, it is our position that there are grounds to revoke the Organization's registration as a charity under paragraph 168(1)(e) of the Act, because it failed to comply with the requirements of subsection 230(2) of the Act.

Further, as a result of the abovementioned, the audit found that the Organization did not comply with all of the corrective measures as outlined in the 2013 compliance agreement that it signed, regarding the maintenance of adequate books and records nor, with subsection 230(2) of the Act. This constitutes material and repeated non-compliance.

2. Failure to devote resources to charitable activities and Gifts to non-qualified donees

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits charitable organizations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(2)(c) provides that a charitable organization may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it. A "qualified donee" means a donee defined in subsection 149.1(1).

A charitable organization must be careful about how it carries on its activities and it must ensure that it keeps sufficient direction and control over its resources, or it could possibly be transferring money to non-qualified donees, which is not a charitable activity. In summary, a charitable organization may carry on its own charitable activities or it may make gifts to qualified donees.

Audit findings

The audit could not verify that the Organization had devoted its resources to conducting charitable activities. Specifically, minimal books and records were available for review during the course of the audit. As outlined in Section 1 above, in the 2016 fiscal year, only .2% of the Organization's total expenses claimed were supported by source documents, and in the 2017 fiscal year, 7% of the Organization's total expenses claimed could be supported by source documents however, it was not apparent that any of the verified expenses were devoted to charitable activities working to advance exclusively charitable purposes. Board meeting minutes were not maintained and therefore it was not possible to assess how the Organization was governed and/or who was involved in decision making regarding the Organization's activities and/or operations. Since the Organization operated in Montreal and that was where █████ Sperlin was located and could direct and manage the Organization's resources, it appears that the operations of the Organization was conducted solely by █████ Pesach Sperlin, with little to no oversight by a board of directors. No supporting documentation was provided which worked to demonstrate that any charitable activities were conducted for the period under audit. Overall, there was a significant lack of supporting documentation. (A more complete discussion of our concerns with respect to the Organization's books and records appears above.)

Lack of direction and control/Gifting to non-qualified donees

With respect to its purported programming, the Organization provided copies of contracts between students and itself, however, these documents were not signed by either party, did not itemize the charitable work to be performed by the students on behalf of the Organization and did not stipulate the amount of re-numeration to be paid for the work. The agreement appeared to be general in nature. Furthermore, the Organization did not provide a contract for every student that had received payment from the Organization.

The Organization indicated that there were 10 students that conducted work on behalf of the Organization in each of the fiscal years under audit. The audit found that foreign students received payment by way of bank draft from the █████. In the 2016 fiscal year, \$160,250 of the Organization's resources were devoted to paying students. This represented 70% of the total expenditures claimed in the 2016 year. In the 2017 fiscal year, \$95,034 of its resources were devoted to paying students and this represented 41% of the total expenses claimed.

█████ Sperlin advised that the Mr. Warshavsky had all of the signed contracts at his residence in Ottawa, and they had since been discarded. █████ Sperlin did not provide any documentation or evidence of the charitable activity that was conducted by the

students. Given the lack of supporting documentation, it appears as though the Organization gifted to non-qualified donees.

As a result of the abovementioned, the audit found that the Organization did not comply with the corrective measures identified in the 2013 compliance agreement regarding maintaining agreements with personnel that provide services on its behalf. Specifically, the agreements were to contain the work to be performed and the remuneration to be paid by the Organization to the specified individual. As such, this constitutes material and repeated non-compliance.

Giftng to non-qualified donees

The audit found that in the 2016 fiscal year, the Organization gifted \$23,400 to Chabad of Vermont, a religious organization located in Burlington, Vermont, USA. The Chabad of Vermont is not a qualified donee as defined in subsection 149.1(1) of the Act. As such, this disbursement is considered to be a gift made to a non-qualified donee.

Further, in the 2017 fiscal year, the Organization gifted \$21,875 to Chabad of Vermont, a religious organization located in Burlington, Vermont, USA and, \$3,840 was gifted to Chabad of Elon, a religious organization located in Elon, North Carolina, USA. The Chabad of Vermont and the Chabad of Elon are not qualified donees as defined in subsection 149.1(1) of the Act. As such, these disbursements are considered to be gifts made to non-qualified donees.

Private Benefit

To be charitable at law, a purpose must fall within a category of charity and deliver a public benefit. However, it is not enough that a purpose, on its face, falls within one or more of the four categories of charity and delivers a charitable benefit to a properly defined eligible beneficiary group. The public requirement also means a charity may not provide private benefits as it advances and furthers a charitable purpose, except within legally acceptable boundaries.¹⁰ The charity is responsible for establishing that any private benefit that may be delivered is acceptable.

Generally, a private benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that exceeds the bounds of charity. An acceptable private benefit is one that is incidental to achieving a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit¹¹.

Necessary essentially means legitimately and justifiably resulting from an action that directly contributes towards achieving a charitable purpose, or a required step in, or consequence or by-product of, an action taken only to achieve a charitable purpose.¹²

¹⁰ See for example *Prescient Foundation v MNR*, 2013 FCA 120 at para 36, [2013] FCJ no 512.

¹¹ For more information, see CRA Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test.

¹² See for example *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Royal College of Surgeons of England v National Provincial Bank*, [1952] AC

Reasonable means related to the need and no more necessary to achieve the purpose.¹³ and fair and rational. Proportionate to the resulting public benefit means a private benefit must be secondary and subsidiary to a charitable purpose.¹⁴ It cannot be a substantial part of a purpose, or form an additional or independent non-charitable end in and of itself. The public benefit cannot be too indirect, remote or speculative as compared to a more direct private benefit, particularly where the direct benefit is to private persons, entities or businesses.¹⁵

As mentioned above, a review of the Organization's cancelled cheques identified several instances where the Organization's funds were used to cover ██████ Sperlin's expenses on his personal ██████ account. Specifically, the audit found that the following amounts were paid to ██████ Sperlin's personal ██████ account :

- 2016 fiscal year \$22,473, which amounted to about 10% of the total expenses claimed.
- 2017 fiscal year \$22,034, which amounted to about 10% of the total expenses claimed.

Due to a lack of expense receipts and invoices provided by the Organization, the amounts paid to ██████ Sperlin's ██████ account could not be substantiated and we were unable to conclude that the amounts related to the Organization's activities. Based on the lack of documentation provided, it appears the Organization may have conferred a private benefit to ██████ Sperlin.

As a result of the abovementioned, the audit found that the Organization did not comply with the corrective measures identified in the 2013 compliance agreement regarding maintaining invoices to support amounts charged to credit cards and further, maintaining documentation to support how such expenses relate to the Organization's activities. This constitutes material and repeated non-compliance.

Given the overall lack of information and supporting documentation, it was not possible to verify that any of the Organization's resources were devoted to conducting charitable activities such as, making gifts to other organizations that are qualified donees or to carrying on its own charitable activities. Rather, the Organization made gifts to a non-qualified donee and conferred a private benefit to its President which, is in contravention of the Act.

631; Royal College of Nursing v St Marylebone Borough Council, [1959] 1 WLR 1007 (CA); IRC v Oldham Training and Enterprise Council, [1996] BTC 539.

¹³ See for example Joseph Rowntree Memorial Housing Association Ltd and Others v AG, [1983] Ch 159 (Ch D); In Re Resch's Will Trusts And Others v Perpetual Trustee Co Ltd, [1969] 1 AC 514 (PC).

¹⁴ Incorporated Council of Law Reporting for England and Wales v AG, [1972] Ch 73, [1971] 3 All ER 1029 (CA); Inland Revenue Commissioner v City of Glasgow Police Athletic Association, [1953] AC 380 (HL); IRC v Oldham Training and Enterprise Council, [1996] BTC 539.

¹⁵ See for example IRC v Oldham Training and Enterprise Council, [1996] BTC 539; Canterbury Development Corporation v Charities Commission, [2010] NZHC 331; Hadaway v Hadaway, [1954] 1 WLR 16 (PC); Re Co-operative College of Canada et al and Saskatchewan Human Rights Commission, [1975] 64 DLR (3d) 531.

For these reasons, it appears there are grounds for the revocation of the charitable status of the Organization under paragraphs 149.1(2) and 168(1)(b) of the Act.

3. Failure to be constituted for exclusively charitable purposes

To be registered as a charity under the Act, Canadian law requires that an Organization be constituted and operated for exclusively charitable purposes that, define the scope of the activities that can be engaged in by the organization.

Audit Findings

As outlined above, given the overall lack of information and supporting documentation, it was not possible to verify that any of the Organization's resources were used to conduct its own charitable activities or to gifts to qualified donees and thereby working to further a charitable purpose. As such, the Organization is not complying with the Act as it has not shown that it is devoting its resources to activities that further exclusively charitable purposes. When a charity's resources are not furthering exclusively charitable purposes, the charity is no longer meeting the requirements for registration under the Act.

For this reason, it is our position there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

The Organization's options:

a) Respond

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

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

b) Do not respond

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

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

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Maria Grieco, may also be reached at (519) 584-3974.

Yours sincerely,



Karen Lockridge
Audit Division
Kingston Tax Services Office

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APPENDIX A

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

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,

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,

(c) a registered Canadian amateur athletic association, or

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

149.1 (2) Revocation of registration of charitable organization

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

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

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

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

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

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

149.1 (3) Revocation of registration of public foundation

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

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

149.1 (4) Revocation of registration of private foundation

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
 - (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1 (4.1) Revocation of registration of registered charity

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

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

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

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

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

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

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

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

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

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

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

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

168 (2) Revocation of Registration

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

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

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

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

168 (4) Objection to proposal or designation

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

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

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

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

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are

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

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

$$A - B$$

where

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

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

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

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

188 (1.2) Winding-up period

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

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

188 (1.3) Eligible donee

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

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

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

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

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

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

188 (3) Transfer of property tax

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

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

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

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

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

188 (5) Definitions – In this section,

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

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

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

189 (6.1) Revoked charity to file returns

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

(a) file with the Minister

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

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

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

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

189 (6.2) Reduction of revocation tax liability

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

(a) the amount, if any, by which

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

exceeds

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

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

189 (6.3) Reduction of liability for penalties

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

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

189 (7) Minister may assess

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