



Canada Revenue
Agency

Agence du revenu
du Canada

March 18, 2010

REGISTERED MAIL

Prescient Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver BC V6G 2Z6

BN: 855802708 RR0001

File #: 3026623

Attention: Blake Bromley

Subject: Audit of Prescient Foundation

Dear Mr. Bromley:

I am writing further to our letter dated January 21, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Prescient Foundation (the Organization) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated February 18, 2009; however, notwithstanding your reply, our concerns have not been entirely alleviated. As such, we wish to clarify our positions based on your representations and to provide the Organization with the opportunity to make additional representations or present additional information. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Organization's registration in the manner described in section 168 of the Act.

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

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Canada

Failure to Operate for and Devote its Resources to Charitable Purposes:

As you are aware, the Organization was registered April 16, 2004, as a public foundation. The Organization's stated purposes, as contained in its governing document are:

- a) to receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees";
- b) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement of the objects of the Corporation."

The Organization, you have represented, does not conduct its own charitable activities, but operates exclusively for the purpose of receiving funds for the purpose of disbursing these funds to qualified donees.

As detailed in our previous letter, during the period under review, December 1, 2004 to November 30, 2007, the Organization engaged in a series of transactions that, in our view, were unrelated to its charitable purpose and predominantly included transactions designed to benefit private individuals and non-qualified donees. It is our view that the Organization primarily operated for the purpose of promoting a private tax planning scheme and has structured its affairs for the benefit of private individuals to the detriment of the Organization's charitable mandate.

As outlined in our previous letter, between 2005 and 2006 the Organization entered into a number of transactions, along with three other Canadian registered charities, to facilitate the sale of farm assets of a corporation, including its BC egg hatching quota. In our view, the transactions were designed to route the property through the participating registered charities under the guise of investments and gifts, to facilitate the avoidance of taxes otherwise payable on the disposition of these assets, rather than to genuinely enrich the charities involved. The Organization's role in the arrangement was to receive funds from another registered charity and to use those funds to purchase the shares of the corporation. The Organization did in fact purchase these shares in full knowledge that the assets of the corporation were to be gifted to another participating charity causing its investments to be de-valued to nil. For its part in the arrangement, the Organization received \$54,000. An in depth overview of the transaction the Organization entered into is outlined in Appendix "A".

In your letter you suggest that "[t]he end result of these transactions was that Prescient caused the disbursement of assets with a net value of \$606,000 to a qualified donee." While your characterization of the end result is interesting, we respectfully

disagree. With respect to the Organization itself, the end result appears to be that, rather than utilizing the \$574,500 received from other registered charities towards its charitable mandate, it instead disposed of \$574,500 through the purchase of soon-to-be-valueless shares and was left with \$54,000 for its role.

In fact, even looking at the transactions as a whole, we do not see a net benefit near what is being represented as donations to the charitable sector, rather:

- The farm property and BC egg quota to be sold by Vision Poultry Ltd. were routed through Theanon Charitable Foundation and subsequently sold to third-parties;
- An amount equivalent to the pre-arranged sale price of the farm property (\$3,460,000) was, through a series of transactions including the purchase of soon-to-be valueless shares, received and transferred out by the participating registered charities to the sellers of the farm property;
- A donation receipt of \$2,020,000 was issued to 570129 BC Ltd.; and
- Relatively minor participation fees were received by the registered charities involved totalling approximately \$150,000.

As such, it remains our view, that during the period under audit the Organization did not operate for charitable purposes, but collaterally, if not primarily, operated for the private benefit of private individuals.

Gifts to Non-Qualified Donees:

Transfer of \$574,500 to the Dekkers:

It is our position that the Organization has made a gift of a non-qualified donee by transferring \$574,500 to the Dekkers in return for a small participation fee and shares that it knew were valueless at the time or were about to become valueless.¹ We do not view this transaction as an acceptable purchase of an investment by the Organization as the devaluation of the shares was pre-planned. As such, we are of the view that the transfer of the funds to the Dekkers was a gift to a non-qualified donee other than in accordance with the Act and in violation of its mandate that it operate for exclusively charitable purposes.

Transfer of \$500,000 to Data Foundation (Data):

Subsequent to our January 21, 2009 letter, we obtained additional information from both a third party source and the Organization. It was confirmed that the sole purpose of the transfer of funds from the [REDACTED]

¹ Refer to Appendix "A" outlining the series of transactions entered into by the Organization, the actions taken by the Organization and the resulting profit earned for its role in the arrangements.

██████████ to the Organization was to flow \$500,000 through to DATA, a 501(c)(3) non-profit organization in the US. The ██████████ was advised by a DATA contact that the Organization would be able to facilitate this transfer. Gifts made to a non-resident charity do not meet the Act's definition of a "qualified donee" therefore by transferring funds to DATA, the Organization has made a gift to a non-qualified donee other than in accordance with the Act and in violation of its mandate that it operate for exclusively charitable purposes.

In your letter of July 16, 2009, you outline your arguments with respect to the *Canada-US Tax Convention* (the Treaty) and ask for the CRA to detail its legal arguments on the proper interpretation of article XXI. With respect, we note that the CRA's longstanding position on the Treaty is expressed in the Registered Charity Newsletter Special Release of Autumn 1996 and confirmed in Technical Interpretations 9428085 and 9728355. In our view, paragraph 7 of the Treaty (then paragraph 6) outlines a limited situation whereby a gift to certain US charities are eligible to the limited relief from Canadian taxation described in that section as if they were made to a Canadian registered charity. The CRA has been clear that its interpretation is that the treaty does not deem US charities to be registered charities for the purposes of the Act such that the US charity could be considered a "qualified donee". Should you wish to provide input to the CRA regarding this proper interpretation of this provision, it is open to you to provide your comments in writing to the Income Tax Rulings Directorate on this matter.

Failure to Maintain Adequate Books and Records & Registered Charity Information Return:

Our position remains that the Organization failed to maintain and/or provide its books and records. A registered charity must maintain, and make available to the CRA at the time of the audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply documentation and records on a piecemeal basis, sometime subsequent to the audit. The CRA was clear as to which records it was to be provided access to and the Organization was provided sufficient time to prepare and provide its books and records prior to and during the course of our audit, yet chose not to make all of its records available.

The representations contained certain records that were not provided during the course of our audit. We note with concern that the records provided appear to indicate that the Organization has paid for legal fees relating to transactions primarily benefiting 570129 BC Ltd., as well as a "gift planning and strategy" provided in 2005, presumably relating to the transactions involving 570129 BC Ltd. and the related parties involved in that tax planning arrangement. This is of concern for a number of reasons notably that:

1. The transactions described above and in Appendix "A" were almost exclusively structured for the benefit of the seller and, as such the payment of the fees by the Organization for the tax planning affairs of private individuals is an inappropriate use of property which should be used for the benefit of charitable beneficiaries; and
2. During the period under review Mr. Bromley acted both in the capacity of Director of the Organization and [REDACTED] thus standing in a potential conflict of interest and the ability to personally profit from the resources of the Organization. The invoice for \$21,400 provides little to no information regarding the meetings attended and consultations attended by Mr. Bromley which to justify the payment by Organization to [REDACTED].

We would also note that as the Organization incurred minimal expenditures for the period audited, the missing information represented substantially all of the Organization's gross expenditures in 2005².

In your letter you argue that the Act does not require board minutes or planning documents be created for individual transactions. The Act, however, requires a registered charity to maintain information in such a form as to determine whether there are grounds for the revocation of its registration under the Act. Again, we note that in 2005, substantially all of the Organization's activity revolved around the \$574,500 expended to purchase shares in a private company and fees relating to this transaction. In our view, the Organization would therefore be required to document the board's discussion and approval of the engagement of [REDACTED] – including the purpose and terms of its engagement, and review and approval of his work provided to the Organization and fees. The minutes of the Board of Directors would also be required to document the purpose, review and analysis of the purchase of shares – particularly around how the expenditure was in furtherance with the Organization's stated mandate.

Similarly, in 2005 and 2006, the Organization received \$500,000 which was both its largest receipt and largest disbursement during the fiscal period. In your letter of March 19, 2009, you outline a number of facts regarding representations received with respect to the transfer of funds to the Data Foundation. Again, none of the details described therein - including the appeal for support by the US Foundation, consideration by the board as to whether it fit within its mandate, why the Organization should flow funds through its accounts rather than direct the [REDACTED] to make the gift directly, or even the representations made to the Data Foundation – are detailed in any of the Organization's books and records. The \$150,000 ten-year gift received and transferred

² The remaining invoices included the charge of \$10,748.15 from [REDACTED] for Mr. Bromley's registration of the Organization and a \$21,400 charge from [REDACTED]. Excluding the purchase of shares which the Organization wrote down to zero, the Organization's total expenditures were \$38,258.

(notably in violation of that same direction) also suffers from a similar lack of documentation.

In short, we remain of the position that the Organization has not maintained adequate books and records and has not provided proper access to its records during the course of an audit.

While we accept the Organization's representations that the errors and omissions occurred on the Registered Charity Information Returns (T3010) are not grounds for revocation, our position remains that the Organization failed to file a complete and accurate T3010.

The Organization's Options:

a) No Response

If you choose not to respond, please advise us in writing of your intent. In that case, the A/Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the A/Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- the Minister giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

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

JE Yours sincerely,



Jeanne Effler, CGA
Audit Division
Telephone [REDACTED]
Facsimile (250) 363-3862

Attachments:

- Our letter dated January 21, 2009
- [REDACTED]
- [REDACTED]
- Appendix "A" Summary of 570129 BC Ltd/Vision Poultry Ltd Transactions

cc: Sherry Cox

[REDACTED]

Christopher Richardson

[REDACTED]