



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

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

APR 27 2010

BN: 86330 9977RR0001

File #: 3028246

Attention: Mr. Paul Mancuso, Director

**Subject: Notice of Intention to Revoke
 Essential Grace Foundation**

Dear Mr. Mancuso:

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 Essential Grace 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 with respect to the Organization's failure to devote all of its resources to its charitable purposes, failure to issue receipts in accordance with the Act and/or its Regulations, and failure to maintain adequate records as required by the Act, have not been alleviated. The basis for our concerns is explained below.

Failure to Operate for Charitable Purposes

As you are aware, the Organization was registered November 12, 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."

In your letter you argue that the Canada Revenue Agency's (CRA) analysis relates to a charitable organization rather than a charitable foundation. While you are correct that the definition of charitable foundation primarily speaks to charitable purposes, the law is clear that in being "established and operated for charitable purposes", a charitable foundation must also

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restrict itself to either carrying on its own charitable activities or gifting its resources to qualified donees - and may not operate for some other non-charitable or private purpose. It was the view of the CRA, in the letter of January 21, 2009, that the Organization had failed to demonstrate that it devoted its resources towards its charitable purposes as it had, instead, operated for the private benefit of particular individuals and corporations.

In our view, the Organization participated in two private transactions that were designed to route property through registered charities under the guise of legitimate investments and gifts, to facilitate the avoidance of taxes payable on the disposition of these assets, rather than to genuinely enrich the charities involved. The Organization's role in these arrangements was to purchase the shares of the corporations. When the assets of the corporation were sold to another corporation or gifted to another participating charity, the shares of the corporation were written down to nil at year-end.

As described in our previous letter, the transactions in question are as follows¹:

1) [REDACTED]

As outlined in our previous letter, in 2005 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.

The Organization's representations state that the Organization "acquir[ed] shares in a corporation which it in turn caused to donate assets to another qualified donee." While your characterization of the end result is interesting, we respectfully disagree. It was [REDACTED] that transferred its assets, not the Organization. With respect to the Organization itself, the end result appears to be that, rather than utilizing the \$670,250 received from other registered charities towards its charitable mandate, it instead disposed of this amount through the purchase of soon-to-be-valueless shares and was left with \$54,000 for its role. In our view, the purchase and pre-planned write-down of \$670,250 in shares is simply an unacceptable use of assets which should have been devoted to genuine charitable ends.

2) [REDACTED]

Regarding the [REDACTED] transactions, as described in our previous letter, the Organization also entered into a number of transactions, along with three other Canadian

¹ Refer to Appendix "A" and "B" Revised, which outline 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.

registered charities, to facilitate another sale of farm assets of a corporation, including its BC egg hatching quota. The transactions, as above, also involved the Organization's purchase of \$989,520 of shares from [redacted] and the pre-planned write-down of the shares to nil.

In your letter you note that the transaction produced no net benefit for the Organization and thereafter the Organization ceased its involvement with such transactions. However, we note that the Organization purchased, on credit, 30% of the shares in [redacted] in full knowledge that these shares, as a part of this scheme, would be de-valued to zero. These shares were in fact devalued to zero when 30% of the assets of [redacted] were gifted to the Organization (and a tax receipt of \$989,520 was issued). After the pre-arranged sale of the properties and repayment of the loans, the Organization was left with no benefit fee for its participation, yet had issued a tax receipt of close to \$1 million. In our view, the Organization's participation in this transaction is clearly an abuse of its tax receipting privileges and one which is not remedied by its decision to refrain from such transactions in future.

Finally the organization argues that it is inappropriate for the CRA to conclude that the Organization has operated primarily or collaterally for tax planning purposes as these transactions occurred during the first six months of the operation of the Organization. We note, however, that in these two tax planning arrangements, the Organization acquired and disposed of shares and assets valued at \$2,649,290, yet received earnings of merely \$54,000² for its role and devoted zero resources to charitable purposes. By contrast, in the three subsequent fiscal years, the Organization devoted \$50,000 to gifts to qualified donees in 2006, no charitable disbursements in 2007, and \$22,400 in 2008.³ From a purely financial standpoint, it is clear that the Organization as a whole has operated for the benefit of private individuals and corporations, rather than exclusively charitable purposes.

Under paragraph 168(1)(b) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with the requirements of the Act for its registration as such. For this reason, there are grounds for revocation of the charitable status of Essential Grace Foundation under paragraph 168(1)(b) of the Act.

Issuing Receipts Not in Accordance with the Act

Our position remains that the assets received by the Organization from [redacted] was not a valid gift under section 118.1 of the Act. The assets received lack *animus donandi*; [redacted] did not necessarily enrich, or intend to enrich the Organization. As noted earlier, the purpose of the transactions was to route pre-sold assets through a registered charity. The sellers of this property, the shareholders, were effectively compensated by the Organization's inappropriate purchase of soon-to-be-devalued shares. In the transactions the Organization purportedly received a gift but was left in no better financial position than before the transaction.

² The net amount earned was further reduced by the \$10,748 the Organization paid in legal services incurred by other individuals and/or organizations.

³ These amounts would not even be sufficient to cover the Organization's 80% disbursement quota obligation associated with the issuance of the \$989,520 donation of property that the Organization subsequently disposed of.

The Organization was, at no time, entitled to maintain or benefit from the property purportedly donated to it. In fact, it does not appear that the transfer of assets was legally effective - the purchase and sale agreements to sell the assets to third parties were signed in March 2005 yet the purported "gifting" occurred in May 2005; and the [] legal representative confirmed to the BC Chicken Marketing Board that the ownership of [] remained in the hands of [] "despite any change in ownership and control of the Company [] which may have taken place".

Under paragraph 168(1)(d) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with the requirements of the Act for its registration as such. For this reason, there are grounds for revocation of the charitable status of Essential Grace Foundation under paragraph 168(1)(d) of the Act.

Failure to Maintain Adequate Records

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 the required documentation and records subsequent to the audit. 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. It remains our position that there is no reason that these records should not have been available, particularly as they represented one of the few actual disbursements during 2005. Again, we note that the Organization's sole activity during that period was participation in two tax planning schemes and devoted no resources to its charitable purposes. Further, the invoice supplied contradicts information supplied during the course of the audit which indicates that the purpose of the amount related to the [] transactions.

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 purchase of shares in private companies and the subsequent sale of these assets. As above, these transactions involved the purchase, once on credit, of millions of dollars in shares. In our view, the Organization would therefore be required to document the board's discussion and approval of the purpose, review and analysis of the purchase of shares (particularly around how the expenditure was in furtherance with the Organization's stated mandate), the discussion and review of the offer of purchase and sale of the assets to third parties, discussion around the risk of purchase of shares on credit, the benefits of entering into each transaction and related issues.

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.

Under paragraph 168(1)(e) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with or contravenes any of sections 230 to 231.5 of the Act. It is our position the Organization has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its Registered Charity Information Returns and financial statements. For this reason, there are grounds for revocation of the charitable status of Essential Grace Foundation.

Registered Charity Information Return

We accept the Organization's representations that the errors and omissions occurred on the Registered Charity Information Returns (T3010); however, our position remains that the Organization failed to file a complete and accurate T3010. Regarding the Other Revenue reported at line 4950 of the 2005 T3010, the Organization reported \$1,649,870 on the T3010 yet reported a loss on share value of the same amount on its financial statements. The transposition error was made by the Organization and not CRA as alleged in your submission.

While we accept that errors may inadvertently occur in the completion of a form, the filing of false statements with the CRA, which includes a statement that contains omissions, is in fact grounds for revocation of a registered charity's status. It is not sufficient to simply file an incomplete return with the CRA and we note that each return is signed by a director who certifies that the information is "correct, complete and current."

Conclusion:

The Canada Revenue Agency's (CRA) audit had revealed that the Essential Grace Foundation (the Organization) operated primarily for the personal benefit of two corporations and their shareholders seeking to dispose of their assets; failed to issue official donation receipts in accordance with the *Income Tax Act* (the Act); filed an inaccurate Registered Charity Information Return; and failed to maintain and/or provide adequate records. For all of these reasons, and for each of these reasons alone, it is the position of the Canada Revenue Agency (CRA) that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated January 21, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in subsection 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d) and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business Number
863309977RR0001

Name
Essential Grace Foundation
Vancouver BC

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

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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

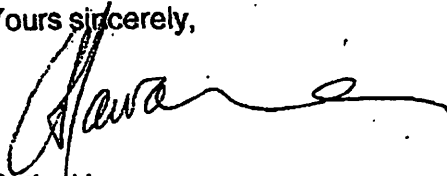
Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "C", attached. Form T-2046, and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at www.cra-arc.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (the ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your 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, I wish to 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,



Cathy Hawara
A/Director General
Charities Directorate

Attachments:

- Our letter dated January 21, 2009;
- Your letter dated February 18, 2009;
- Appendix "A" - Revised Summary of ;
- Appendix "B" - Revised Summary of ; and Transactions;
- Appendix "C", Relevant provisions of the Act

cc: Mr. Ronnie Negus