



Canada Revenue
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Agence du revenu
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REGISTERED MAIL

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

DEC 23 2010

BN: 855802708 RR0001
File #: 3026623

Attention: Blake Bromley

**Subject: Notice of Intention to Revoke
 Prescient Foundation**

Dear Mr. Bromley:

I am writing further to our letters dated January 21, 2009, March 18, 2010 and May 10, 2010 (copies enclosed), in which you were invited to submit representations as to why the registration of Prescient Foundation (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written responses dated February 18, 2009, July 16, 2009, April 9, 2010, August 13, 2010, and your comments during your conversation with the Director of Compliance of the Charities Directorate on August 31, 2010. However, notwithstanding your representations, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position on these matters is summarized in Appendix A attached.

Conclusion:

The Canada Revenue Agency (CRA) audit has revealed that the Prescient Foundation (the Organization) was not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization has failed to demonstrate that it operates exclusively for its own charitable purposes and that it maintains adequate books and records.

Consequently, for the reasons mentioned herein, and as further explained in our letters dated January 21, 2009, and March 18, 2010, I wish to advise you that, pursuant to subsection 168(1) of the Act, 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) 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	Name
855802708RR0001	Prescient 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:

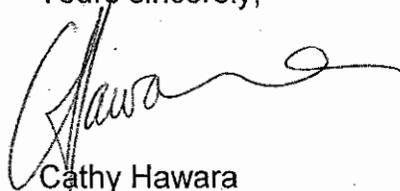
- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as deductions to corporate donors 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 prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letters dated January 21, 2009, March 18, 2010, May 10, 2010
- Representation letters dated February 18, 2009, July 16, 2009, April 9, 2010, August 13, 2010
- Appendix "A" Our Position
- Appendix "B", Relevant provisions of the Act

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

Transactions involving 570129 B.C. Ltd. / Vision Poultry Ltd.

Our letters of January 21, 2009, and March 18, 2010, detailed a series of transactions¹ through which the Prescient Foundation (Organization) and two other charities had purchased the shares of 570129 BC Ltd. ("570129"). Despite your submissions on this issue, it remains our position that the transactions were not undertaken to fulfill the Organization's mandate of disbursing funds to qualified donees but to confer substantial benefits on private individuals.

In your representations, you explained that the Organization (along with two other charities) purchased the shares of 570129 to "cause" the latter to make a significant gift (farm assets) to Theanon². In your view, this is sufficient to demonstrate that the Organization operated for the purpose of "disbursing funds to qualified donees". As previously explained, we disagree with this characterization.

First, we cannot agree that a gift of assets from a separate corporation to a qualified donee constitutes a disbursement of funds by the Organization itself, even where the shares of that corporation are owned by the Organization. The disbursement is that of the corporation.

Second, whether it was the Organization or 570129 that caused the transfer of farm assets to Theanon, it is our position that the transfer did not represent a *bona fide* gift. As detailed previously³, Theanon made various cash transfers to the Organization and two other charities that purchased the shares of 570129 just days before 570129 purportedly gifted its assets to Theanon. The proximity of the dates and nearly-identical values⁴ of the cash transfers by Theanon and the purported gift of farm assets to Theanon indicated the transactions were circular in nature. Even if we accepted your assertion that the Organization had caused farm assets to be transferred to Theanon, the transactions could only be characterized as an exchange of properties rather than a gift.

It is therefore our conclusion that the Organization did not make a gift nor caused a gift to be made to a qualified donee. As described in our previous letters, we do not agree that the primary purpose of these transactions was to enrich the

¹ See Appendix A to our letter of March 18, 2010.

² You raised this argument in your letter dated February 18, 2009, your [REDACTED], and your conversation with our Director of Compliance on August 31, 2010.

³ See footnote 1.

⁴ Theanon paid \$1,900,000 in cash to the Organization and the other two charities on February 25, 2005. 570129 transferred farm assets to Theanon from 570129 valued at \$2,020,000 (\$3,460,000 net of \$1,440,000 in outstanding debt) on March 1, 2005. A further cash payment of \$54,000 was paid to the Organization by Theanon on June 24, 2005.

charities involved. Rather, it is our position that the intent of these transactions was simply to facilitate the sale of farm assets⁵ by 570129 to an outside purchaser while avoiding taxes otherwise payable by the sellers. As previously indicated⁶, an agreement was already in place to sell the farm assets to an outside purchaser before the share transaction took place. If 570129 sold the assets directly to the outside purchaser, the sale would have been subject to a capital gains tax. Dividend taxes would also be applicable when the sales proceeds are withdrawn from 570129 by the Dekkers. By purportedly gifting the farm assets to Theanon before the eventual sale, 570129 was able to offset the capital gains tax otherwise payable with the tax receipt issued by Theanon. Furthermore, the net proceeds of sales purportedly received by Theanon approximately offset the cash payments it made to the Organization (and two other charities) five days prior. Effectively, the Organization's (and the two other charities') purchase of the shares of 570129 represented a routing of the proceeds from the sale of farm assets to the Dekkers on a tax-free basis⁷.

It is our conclusion that the Organization primarily operated for non-charitable purposes during the period under review. The Organization purportedly received a gift of \$574,500 which it should have devoted to charitable activity or genuine disbursement to qualified donees. Instead, these funds were used to purchase shares from private parties that (1) were to become valueless when the underlying property was transferred out of the corporation and (2) the underlying property of which was already sold to a third party. It is our position that the Organization purchased these shares in order to allow private parties to receive funds on a tax-free basis. We note that in the fiscal period ending November 30, 2005, this represents substantially all of the Organization's financial activity.

In your conversation with our Director of Compliance on August 31, 2010, you contended that the Organization "came out with more money". *Per* our previous letters, we cannot accept that the fact that the small fee paid to Prescient justifies the use of \$574,500 of the Organization's resources to purchase and write-down shares.

Therefore, and as described in our previous letters, it remains the CRA's position that the Organization has failed to operate exclusively for charitable purposes as required by the Act, but has operated collaterally, if not primarily, to promote a tax planning arrangement for the benefit of private individuals. In our view, this reason alone is sufficient in and of itself to warrant the revocation of the Organization's status.

⁵ Including real estate, 30,050 BC egg hatching quota and equipment. See Footnote 1.

⁶ See footnote 1.

⁷ The Dekkers were able to offset the capital gains tax on the sale of the 570129 shares with the capital gain exemption on farm property.

Finally, you requested that CRA await the decision of the Tax Court of Canada ("TCC") on the Dekkers before concluding the audit. As you are aware, the Charities Directorate is responsible for auditing registered charities and determining their compliance with the Act. In general, the factors behind the reassessment of a taxpayer and the compliance issues of a registered charity would be different. In our view, the potential decision of the TCC relating to the tax liability of the taxpayer is unlikely to alter the view of the CRA as to whether the Organization operated in compliance with the Act. As such, we are not willing to hold this matter in abeyance.

Gifts to Non-Qualified Donees

1. Transfer of \$574,500 to the Dekkers:

Our letter of March 18, 2010 explained that we considered the \$574,500 paid to the Dekkers to be a gift to a non-qualified donee. You disputed this position in your letter of April 9, 2010, explaining that the 570129 shares became valueless only because the Organization caused 570129 to make a gift to Theanon. As we have detailed above, we do not accept the position that the transfer of property from 570129 constitutes a gift or disbursement from Prescient. As above, it was apparent from our review of the tax planning scheme that the Organization was fully aware of the purpose of the pre-ordained transactions. The Organization knowingly transferred \$574,500 to private individuals to acquire shares that were to become valueless when the pre-sold assets were transferred out of the corporation. Therefore, we remain of the conclusion that the Organization made a gift to a non-qualified donee in this transaction.

2. Transfer of \$500,000 to the Data Foundation (DATA)

As explained in our previous letter, it is the CRA's view that the Organization has made a gift to a non-qualified donee by transferring funds to DATA, a 501(c)(3) non-profit organization in the United States.

You have expressed your disagreement with CRA's interpretation of article XXI of the *Canada-US Tax Convention* (the Treaty). In your Service-Related Complaint, you informed us of your intention to apply to the Competent Authority to settle this issue and requested that we hold the audit in abeyance in the meantime.

As discussed in our previous letters, the CRA's longstanding position with respect to this issue has been articulated in a number of publications. In our view, this matter is settled. While you are welcome to provide your comments with respect to this interpretation to the CRA, we are not prepared to suspend the audit.

In our view, each of the gifts, described above, in and of itself would be sufficient to warrant the revocation of the Organization's registration.

Accordingly, and as per our previous letters, we remain of the view that the Organization fails to meet the definition of charitable foundation as laid out in subsection 149.1(1) of the Act. By operating primarily, or at least collaterally, for the benefit of private individuals, it cannot be said to have been operated for exclusively charitable purposes. Further, by gifting its resources to individuals or entities that are not qualified donees, we are further of the view that the Organization failed to operate for exclusively charitable purposes. For each of these reasons, it is our view that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

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

Our position remains that the Organization failed to maintain and/or provide adequate 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; however, it remains our position that the records provided clearly do not relate to the Organization's own operations. The records pertain to the above noted transactions and were incurred by 570129 and the parties involved in that tax planning arrangement, yet were paid for by the Organization. We would also note that despite the Organization incurring minimal expenditures for the period audited, the missing information represented substantially all of the Organization's gross expenditures. It also provided further evidence that the net profit the Organization retained from the share selling arrangement was further reduced by the payment of fees incurred by 570129 *et al.*

Under subsection 149.1(3) of the Act, the Minister may revoke the registration of the registered charity in the manner as described at paragraph 168(1)(e) of the Act because the registered charity 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 Prescient Foundation.

Section 149.1: [Charities]

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; or
- (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.

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;
- (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 (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;
- (c) since June 1, 1950, acquired control of any corporation; or
- (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 the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (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.

Section 168: Notice of intention to revoke registration

168(1) Where a registered charity or a registered Canadian amateur athletic association

- (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 as such,
 - (c) fails to file an information return as and when required under this Act or a regulation,
 - (d) issues a receipt for a gift or donation 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 or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,
- the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration

Where the Minister gives notice under subsection (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 that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) 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.

Section 172: Appeal from refusal to register, revocation of registration, etc.

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

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
 - (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,
- (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) refuses to issue a certificate of exemption under subsection 212(14),
- (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, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (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), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Section 180: Appeals to 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) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (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), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the 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.

Section 188: Revocation tax

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
- (d) 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 registered charity

- (a) 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;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) 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.

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) applies.

188(4) Idem

Where 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 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”

“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”

“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.

Section 189

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 mailed 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 registered charity in respect of the charity'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 charity after the day on which the Minister first assessed that liability and before the particular time 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 total of

- (a) the consideration given by the 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, 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.