

July 21, 2022

REGISTERED MAIL

Leslie Brandlmayr
Director
Headwaters Foundation
1250 – 1500 West Georgia St
PO Box 62
Vancouver, BC V6G 2Z6

BN: 83102 4203 RR0001
File: 3045194

Dear Leslie Brandlmayr,

Subject: Notice of intention to revoke

We are writing with respect to our letters dated January 8, 2020, and March 2, 2021 (copies enclosed), in which Headwaters Foundation (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from September 1, 2015 to August 31, 2017. Specifically, the Foundation was asked to explain why its registration should not be revoked in accordance with subsection 168(1) and/or financially sanctioned under section 188.1 of the Income Tax Act.

We have reviewed and considered your written responses dated March 9, 2020, and May 3, 2021 (the Representations). Your replies have not alleviated our concerns with respect to the Foundation's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

Conclusion

The audit by the CRA found that the Foundation is not complying with the requirements set out in the Act. In particular, it was found that the Foundation failed to devote resources to a charitable purpose, failed to meet its disbursement quota, and failed to file an information return as and when required by the Act. For these reasons, it is our position that the Foundation no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letters dated January 8, 2020, and March 2, 2021, and pursuant to subsection 168(1), 149.1(3) and 149.1(4.1) of the Act, we hereby notify you of our intention to revoke the registration of the Foundation. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b) and 168(1)(c), subsection 149.1(3), and paragraphs 149.1(4.1)(a) and 149.1(4.1)(b) of the

Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
8311024203RR0001	Headwaters Foundation Vancouver, BC

In addition, due to the egregious and material nature of non-compliance found in the audit, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

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 Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

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

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

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

Consequences of revocation

As of the effective date of revocation:

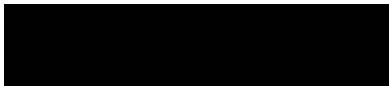
- a) the Foundation will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Foundation would not be allowable as tax credits to

individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

- b) by virtue of section 188 of the Act, the Foundation will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at canada.ca/charities-giving;
- c) the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Foundation may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. 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 1-800-959-8287.

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,



Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act
- CRA letter dated January 8, 2020
- Foundation's representations dated March 9, 2020
- CRA letter dated March 2, 2021
- Foundation's representations dated May 3, 2021

c.c.: Leslie Brandlmayr

ITR Appendix A
Headwaters Foundation
Comments on Representations

During our audit of Headwaters Foundation (the Foundation) we prepared two administrative fairness letters (AFL). The first AFL was dated January 8, 2020, and the second AFL was dated March 2, 2021. After receiving the Foundation's representations to the first AFL¹, we determined that we failed to include an adequate analysis of all of our audit findings.

In the second AFL we addressed the concerns the Foundation raised in its March 9, 2020 representations and presented the Foundation with our updated audit findings to provide the Foundation with an opportunity to present any additional representations. While the second AFL replaced the first AFL, throughout this appendix we have included in this document information related to the first AFL and the Foundation's March 9, 2020 representations to provide additional context to explain how we have arrived at our decision to revoke the Foundation's registered status as a charity.

In our AFLs, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from September 1, 2015 to August 31, 2017, identified that the Foundation is not operating in compliance with the provisions of the Income Tax Act (the Act) in the following areas:

1. Failure to devote resources to a charitable purpose;
2. Failure to meet the disbursement quota; and
3. Failure to file an information return as and when required by the Income Tax Act and/or its Regulations

In its representations dated May 3, 2021, the Foundation stated that penalties assessed by the Minister under section 188.1 of the Act are appealed to the Tax Court of Canada rather than a judicial review. The Foundation viewed this as an important distinction as appeals to the Tax Court of Canada differ from those to the Federal Court of Appeal. We acknowledge that a penalty under section 188.1 of the Act is appealable to the Tax Court of Canada rather than directly to the Federal Court of Appeal.

We have reviewed and considered the representations of both March 9, 2020, and May 3, 2021, and we maintain our position that the non-compliance identified during our audit, with the exception of our position on the standard of review, represent a serious breach of the requirements of the Act. As a result of this non-compliance, the Foundation's registration as a charity should be revoked.

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

- a summary of the issues raised in our AFLs dated January 8, 2020, and March 2, 2021;
- the Foundation's representations dated March 9, 2020, and May 3, 2021; and
- the CRA's response to the representations.

¹ Dated March 9, 2020.

Although we maintain our position that each of the section 188.1 penalties we discussed in our previous letters are applicable and could be assessed from a technical perspective,² we will not be assessing any of the penalties as a result of the current audit given that we are now informing the Foundation of our intention to revoke its status as a registered charity.

Issues of non-compliance

1. Failure to Devote Resources to a Charitable Purpose

Private benefit

In the AFL dated January 8, 2020 (first AFL), we informed the Foundation that we were of the view that it was operated for the non-charitable purpose of facilitating a private tax planning arrangement. We further noted that the Foundation structured its affairs for the benefit of private persons to the detriment of the Foundation's charitable mandate.

In response to the first AFL, the Foundation's representations dated March 9, 2020 (first representations), contested both these findings. In regard to the tax planning arrangement, the Foundation disagreed that it operated for a non-charitable purpose and disputed the standard of review used by CRA in our analysis of this particular concern. Specifically, the Foundation was of the view that the determination of whether an activity is in furtherance of a charitable purpose is strictly a legal question and should be evaluated with the standard of correctness. In regard to the private benefit, the Foundation stated that we had not identified the person who received the private benefit or explained how the CRA had concluded that this Foundation's delivery of said private benefit had been at the detriment of the Foundation's charitable mandate.

We responded with the second AFL dated March 2, 2021 (second AFL), indicating that in our view, despite the Foundation disagreeing with the non-compliance concerns that we identified in the first AFL, the Foundation failed to provide any documentary evidence to support that it was operated for a charitable purpose. We also explained that the decisions that we made as a result of our audit findings were based on an interpretation and analysis of a mixture of both fact and law and as such, the proper standard of review for this audit is the standard of palpable and overriding error.

We further clarified that the steps of the tax planning arrangement were as follows:

- 1) ██████████ (██████)³ donated ████████ shares to CHIMP Charitable Impact Foundation (Chimp).
- 2) ████████ sold land to Paraklesis Foundation (Paraklesis), a qualified donee, and took back a mortgage from Paraklesis as payment.
- 3) ████████ requested that the mortgage be "satisfied upon receipt of 1,123,362 shares of ██████████ ██████████ which Paraklesis did not own at the time.

² Under subsection 189(7) of the Act, the Minister (that is, the CRA) may assess any applicable financial penalties against revoked charities and/or charities the Minister is in the process of revoking.

³ ████████ is a private, for-profit, corporation.

⁴ ██████████ is a company traded on the Toronto Stock Exchange (TSX).

- 4) A series of transactions⁵ occurred which resulted in the transferring of █████ shares from Chimp, via the Foundation, to Paraklesis.
- 5) Paraklesis satisfied the terms of the mortgage by transferring the █████ shares to █████, as requested by █████

Based on this series of transactions, we were of the view that the private person that benefited was █████ as it received a tax credit for its donation to Chimp for donating assets despite the fact that the assets were ultimately returned to █████ as part of the pre-arranged series of transactions (that is, the tax planning arrangement).

The Foundation's response

The Foundation agreed in the representations dated May 3, 2021 (the second representations), that the standard of review for the Minister's decision to revoke charitable registration is palpable and overriding error. As discussed previously, this is the only standard applicable to this audit, since we are not pursuing section 188.1 financial penalties.

The Foundation further stated that "no statutory basis has been provided as to why transactions that allowed █████ to receive a tax credit for its donation to Chimp and then subsequently repurchase the █████ shares for fair market value run afoul of the rules governing the operations of a charitable foundation." The Foundation is of the view that the transactions involving █████ shares supported the Foundation's ability to meet its charitable purposes of gifting to qualified donees. As such, the transactions fulfill a charitable purpose and any private benefit that may have accrued to █████ is incidental because it is reasonable and proportionate to the resulting public benefit.

The Foundation also questioned why we reference 149.1(3) of the Act in our second AFL under the private benefit heading. We will address this concern later in this appendix when we discuss the concerns that the audit has identified pertaining to the Foundation's disbursement quota requirements.

CRA's response

We maintain our position that an unacceptable private benefit was conferred by the Foundation. The private benefit to █████ is not incidental to fulfilling any charitable purpose, as no discernible public benefit has been described. The Foundation did not respond to our concern that the █████ shares did not in fact stay in the charitable sector, as Paraklesis transferred the shares to █████ shortly after receiving them; therefore, it is our view that the charitable sector did not benefit from this series of transactions. Furthermore, it is important to note that all of the individual transactions within this series of transactions were pre-arranged. We maintain that there is no public benefit, and hence the private benefit to █████ cannot be incidental.

For the reasons identified above, we maintain our position that the purpose of the transactions was to facilitate a private tax planning arrangement for the benefit of private persons, which does not fulfil a charitable purpose. Without exclusively charitable purposes and activities, the

⁵ This series of transactions was outlined in Appendix A of our first AFL, which is enclosed with this letter.

Foundation does not meet the definition of public foundation that is provided subsection 149.1(1) of the Act. This definition provides that a charitable foundation must be constituted and operated exclusively for charitable purposes.

Disbursements to Qualified Donees

We are of the opinion that the series of transactions related to the ██████ shares were not entered into with the intention of making gifts to other qualified donees, or to further any other charitable purpose. The first AFL advised the Foundation of our view that the transactions did not result in a gift being made in the legal sense and that these transactions were part of a private tax planning arrangement entered into in order to delay expenditures on charitable activities.⁶

In the first representations, the Foundation stated that the transfer of ██████ shares to Paraklesis was a gift. The Foundation also explained that it is of the view that regardless of whether it was a gift or not, it would still be a transaction that was made in furtherance of the Foundation's purposes. The Foundation explained that it "became involved to enable ██████ shares to become a charitable asset in July because the donations may not have been made if delayed until September." In short, the Foundation contested that the series of transactions related to the ██████ shares were made in furtherance of the Foundation's purposes of "to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of distributing funds and property exclusively to registered charities."

In the second AFL we responded by explaining that in our view the inclusion of the term disbursement in the definition of charitable purposes refers specifically to "disbursements by way of gifts to qualified donees", and not merely disbursements in the general sense of the word. Given that our audit findings led to our conclusion that the Foundation's sale of the ██████ shares was made as part of a tax planning arrangement that provided a private benefit to ██████, we explained that it was our view that the sale could not be considered a disbursement by way of gifts to qualified donees, and that the sale did not further a charitable purpose.

The Foundation's response

In the second representations, the Foundation agreed with our view that only disbursements by way of gifts to qualified donees, and not disbursements in general, enable a registered charity to meet its disbursement quota; however, the Foundation believed that our reference to the disbursement quota was irrelevant to its concerns. The Foundation acknowledged that it concurred that the sale of the ██████ shares was not a charitable activity, but maintained that the sale was fulfilling a charitable purpose. Furthermore, the Foundation expressed disconcert with our view, stating that if the above position taken by the CRA in the second AFL was correct, then charitable foundations would never be able to invest in financial securities as investment activities are not charitable activities in and of themselves.

⁶ We discuss both of these reasons in further detail under the subheading "Entering into transactions with the intention to avoid or delay expenditures on charitable activities." which is found under the "Failure to meet the Disbursement Quota" heading.

CRA's response

We maintain our position that the sale of the [REDACTED] shares cannot be considered as disbursements by way of gifts to qualified donees, and that the neither the purchase nor subsequent sale of the shares were made in furtherance of the Foundation's stated charitable purposes.

While the Foundation has explained that it believes that the sale of the [REDACTED] shares fall within the wording of the Foundation's "registered purposes", it has not provided any evidence to support how the purchase and sale of the shares furthered these charitable purposes. As such, it is our view that the Foundation has not demonstrated that it is furthering a charitable purpose by partaking in the tax planning arrangement outlined in the first and second AFLs, meaning that the Foundation has therefore ceased to comply with the requirements of the Act for continued registration as a charity.

We further advise that while it is permissible for charitable foundations to conduct investment-related activities, if such activities were to occupy a significant portion of the foundation's time and resources, it may call into question whether the foundation is operated exclusively for charitable purposes and whether such activities have become a non-charitable purpose in its own right. For this reason, when a charitable foundation chooses to involve itself in investment activities, it must be able to demonstrate that the investment activities were conducted in furtherance of a charitable purpose.

With respect to the Foundation, it is our view that the pre-arranged series of transactions⁷ related to the [REDACTED] shares are considered investment activities which, as noted in the second AFL, were the only significant financial transactions made by the Foundation during the audit period. It is our view that the transactions occupied a significant portion of the Foundation's time and resources and, since the Foundation has not demonstrated that the investment activities were conducted in furtherance of charitable purposes, it is our position that the Foundation was not operated exclusively for charitable purposes.

We maintain our position that the Foundation was operated for the non-charitable purpose of facilitating a private tax planning arrangement and failed to meet the requirements of subsection 149.1(1) of the Act, that it be constituted and operated exclusively for charitable purposes. For this reason, our position remains that there are grounds for revocation of the Foundation's charitable status under paragraph 168(1)(b) of the Act.

Undue benefit

In the first AFL, we explained that we considered consulting fees the Foundation paid on behalf of non-qualified donees in 2016 and 2017⁸ to be undue benefits that the Foundation conferred to the non-qualified donees. In the first representations, the Foundation stated that we failed to properly explain why we took that position, and in response we provided a detailed outline of our audit findings in the second AFL to explain how we arrived at our conclusion that undue benefits were conferred to the non-qualified donees.

⁷ This series of transactions was outlined in Appendix A of our first AFL, which is enclosed with this letter.

⁸ [REDACTED] Archon Minerals Ltd. in 2016, and Waterwell Turbine Inc. in 2017.

The Foundation's response

In the second representations, the Foundation explained why it believes that a subsection 188.1(4) penalty cannot be applied in these instances because the amounts in question were not payments “for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity or association”.

CRA's response

It remains our view that in paying for consulting fees on behalf of non-qualified donees, the Foundation gifted the value of the consulting fees to non-qualified donees, and therefore the payments can be considered undue benefits per subsection 188.1(5). However, we are not assessing an undue benefit penalty due to our decision to revoke the Foundation's registered status.

2. Failure to meet the Disbursement Quota

As stated in the first AFL, the Foundation failed to meet its disbursement quota (DQ) requirements, which are outlined in subsection 149.1(3) of the Act. The disbursements made by the Foundation did not fulfill any charitable purpose; rather, the disbursements provided a private benefit, which is why subsection 149.1(3) of the Act was referenced under the private benefit heading.

When calculating its disbursements, the Foundation only considered gifts to qualified donees, and no other expenditures, as the expenses it was incurring to meet its DQ requirements. We explained that, in our view, contrary to what the Foundation reported, the two amounts⁹ reported as gifts to qualified donees in the audit period did not qualify to meet its DQ requirements.

In the first representations, the Foundation stated that the first AFL did not quantify or stipulate the amount of expenditures that, in the CRA's view, the Foundation would need to complete to meet its DQ requirements. As such, in the second AFL we provided detailed explanations in this regard, and included a working paper as an enclosure to the second AFL that clearly quantified the Foundation's DQ shortfall.

The Foundation's response

In the second representations, the Foundation did not directly address the DQ shortfall. Rather, the Foundation discussed each of the two amounts that it reported as gifts to qualified donees (i.e., amounts of \$4,712,500 given to Paraklesis and \$4,000,000 given to Chimp.) Each transaction is discussed in more detail below under the headings “Entering into transactions with the intention to avoid or delay expenditures on charitable activities” and “Gifts not at arm's length”, respectively.

⁹ Transfer of [REDACTED] shares to Paraklesis valued at \$4,712,500 and \$4,000,000 cash transferred to Chimp.

CRA's response

We maintain our position that the Foundation has not met its DQ requirements and that the Foundation should be revoked in the manner provided in paragraph 168(1)(b). Our position is further explained below.

Entering into transactions with the intention to avoid or delay expenditures on charitable activities

and

Assisting another registered charity to delay expenditures on its own charitable activities¹⁰

In the first AFL we informed the Foundation that we were of the view that the \$4,712,500 it reported as a gift to Paraklesis was an intentional error in reporting. It was our view that the Foundation knew, or ought to have known, that this transaction was a sale to Paraklesis and not a gift. At that time, we believed that since valuable consideration was exchanged between the Foundation and Paraklesis¹¹ as part of the transaction, this precluded the transaction from being a gift. We further concluded that this error was made in an attempt to present a sale as though it were a charitable activity, and with the intention to avoid or delay expenditures on legitimate charitable activities. In other words, the Foundation reported this sale as a gift to a qualified donee in order to increase its expenditures on charitable activities, resulting in the Foundation meeting its DQ requirements. Pursuant to subsection 149.1(4.1)(a) of the Act - the Minister may revoke the registration of any charity that 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.

In the first representations, the Foundation stated that in its view the first AFL did not provide any explanation for why we believed that the Foundation did not meet its DQ requirements, nor did we explain why we believed that the Foundation had intentionally avoided or unduly delayed expenditures on charitable activities.

In the second AFL, we explained why we felt that the Foundation's gift to Paraklesis was artificial by concluding that the gift was only made to make it appear as though the Foundation was engaging in charitable activities by making a gift to a qualified donee¹². As we concluded that the transfer of the █████ shares cannot be considered a gift because valuable consideration was received by the Foundation in return for this transfer. Finally, as we concluded that the Foundation's gifts to Paraklesis were not charitable, the Foundation could not consider the gifts to be charitable for the purposes of meeting its DQ requirements.

¹⁰ We have discussed these two non-compliance issues simultaneously as they both relate to the Foundation's participation in the series of transactions. Meaning, by participating in the series of transactions we have concluded that the Organization was both: entering into transactions with the intention to avoid or delay expenditures on its own charitable activities and assisting another registered charity, in this case Paraklesis, to do the same.

¹¹ The Foundation received \$4,735,985 cash from Paraklesis a few days after transferring the █████ shares. This is not significantly different from the \$4,712,500 value which the Foundation itself reported for the shares.

¹² That is, the "gift" to Paraklesis was not made with donative intent, and therefore was not charitable in nature.

We further clarified that the Foundation did not have any assets that were generating enough income to enable the Foundation to make gifts to qualified donees. Therefore, we concluded that without the artificial gift to Paraklesis the Foundation would not have been capable of meeting its DQ requirements.

Foundation's response

In the second representations the Foundation reiterated that, in its view, unduly delaying an expenditure on charitable activities was not a purpose of any of the Foundation's transactions. The Foundation repeated its assertion that that it "only purchased the ██████ shares as part of the aforementioned pre-planned series of transactions which had the result of adding more than \$4 million of equity into the charitable sector." Meaning, in the Foundation's view, the transactions involving ██████ shares were undertaken for charitable purposes.

The Foundation also reiterated its position from the first representations, that the transfer of the ██████ shares to Paraklesis was legally a gift and that it was made to further a charitable purpose. The second representations explained that the Foundation intended for the transfer to be a gift and it referenced a court case, *Richert v. Stewards Charitable Foundation* (BCTC 2005 211), to demonstrate that "reciprocal gifts" have been recognized by the law.

CRA's response

Contrary to the Foundation's response in the second representation, as discussed above under the heading "failure to devote resources to a charitable purpose," the ██████ shares did not remain in the charitable sector. Rather, under the terms of a pre-arranged series of transactions the shares were transferred to ██████, a non-qualified donee. As such, we do not agree with the Foundation's claim that more than \$4 million of equity was added to the charitable sector as a result of the series of transactions.

The Foundation's representations only considered the entries in the series of transactions up to and including the transfer of ██████ shares from the Foundation to Paraklesis, but did not consider the final step in the series of transactions when Paraklesis transferred the ██████ shares back to ██████. When regarding the entirety of the series of transactions, this step cannot be ignored as it is the step in the series wherein the shares ceased to be an asset that was both owned, and usable, by the charitable sector. This step also provides evidence in support of our view that the purpose for the Foundation partaking in this series of transactions was not charitable in nature.

While the Foundation did not directly transfer the ██████ shares to ██████ (that is, to a for-profit entity), by becoming involved in a pre-arranged series of transactions which resulted in the ██████ shares being transferred to ██████, it enabled its resources to be used for non-charitable purposes.

The Foundation claims that its participation in the series of transactions enriched the charitable sector by \$4,000,000¹³, however, by examining the individual transactions within the series, it is clear that the charitable sector was not enriched in the manner described in the representations.

¹³ As part of the series of transactions, the Foundation transferred \$4,000,000 in cash to Chimp.

To demonstrate our view, below is a list of the transactions that occurred between ██████, a for-profit entity, and several qualified donees:

- 1) On November 25, 2014, ██████ donated 1,250,000 shares of ██████ valued at \$4.40 per share to Chimp, for a total gift of \$5,500,000;
- 2) On June 3, 2015, ██████ sold land valued at \$4,212,606.93¹⁴ to Paraklesis and took back a mortgage from Paraklesis as payment, requesting that Paraklesis satisfy the terms of the mortgage by transferring ██████ 1,123,362 of the shares referred to in step 1¹⁵;
- 3) The following series of transactions was agreed upon and enacted for the purpose of the shares being transferred from Chimp, via the Foundation, to Paraklesis:
 - a. On July 14, 2015, the Foundation received gifts totalling \$4,750,000 from two charities: Association for the Advancement of Scholarship (AAS) and Timothy Foundation (Timothy);
 - b. On July 14, 2015, the Foundation purchased \$4,736,062.50 in ██████ shares from Chimp;
 - c. On July 24, 2015, the Foundation transferred the ██████ shares to Paraklesis;
 - d. On July 30, 2015, Paraklesis transferred \$4,735,985 in cash to the Foundation;
 - e. On July 30, 2015, the Foundation gave \$4,000,000 to Chimp. This payment was made using two cheques from the Foundation's bank account; cheque ██████ for \$1,000,000 and cheque ██████ for \$3,000,000.
- 4) On October 9, 2015, Paraklesis satisfies the terms of its mortgage agreement with ██████ by completing a floor trade of 1,186,620 ██████ shares at \$3.55. These shares were then used as payment to cover the balance of the mortgage¹⁶.

To summarize, this entire series of transactions resulted in:

- a) ██████ shares being in the possession of the same owner at the beginning of the series of transactions, and the end of the series¹⁷;
- b) Land being owned by Paraklesis that may or not be used for charitable purposes; and
- c) No additional financial resources being added to the charitable sector:
 - Before the series of transactions occurred, the \$4,750,000 given by AAS and Timothy to the Foundation was already in the charitable sector (that is, both AAS and Timothy are registered charities);
 - After the series of transactions occurred, \$4,000,000 was held by Chimp while the majority of the remaining \$750,000¹⁸ was held by the Foundation.

If we focus exclusively on the portion of the series of transactions that the Foundation was directly involved in¹⁹, there is no evidence to suggest that the Foundation's involvement in the

¹⁴ The land portion was worth \$4,195,750, but the transaction included an additional \$16,856.93 in property tax. \$4,195,750 + \$16,856.93 = \$4,212,606.93.

¹⁵ Note that at this time, Paraklesis did not own the ██████ shares.

¹⁶ That is, \$4,212,606.93.

¹⁷ While some of the shares remained in the charitable sector at the conclusion of the series of transactions (i.e., 1,250,000 – 1,186,620 = 63,380), the majority of the shares (i.e., 1,186,620/1,250,000, or 94.9%) were transferred back to ██████ during the series of transactions.

¹⁸ \$735,585 remained in the Foundation's possession. The majority of the difference between this amount and the \$750,000 is attributable to fees payable by the Foundation as a result of the ██████ share transactions.

¹⁹ That is, step 3 of the entire series of transactions.

series of transactions contributed any material resources to the charitable sector. For this reason, we maintain our position that there was no discernible public benefit from this series of transactions, and the Foundation did not enter into these transactions for charitable purposes.

As we explained in the second AFL, as of August 31, 2017, the Foundation owned assets that were not generating any revenue. Therefore, it had inadequate revenue generating sources to make gifts to qualified donees of the amounts required for the Foundation to meet its DQ requirements. Given the lack of any discernable charitable purpose to the Foundation's involvement in the series of transactions, it is our view that the Foundation became involved in these transactions for the purpose of appearing to meet its DQ requirements. Furthermore, while the Foundation maintains that these transactions fulfilled its charitable purposes, as it claims that it was gifting to qualified donees, we believe that the purpose for making these artificial gifts was to delay expenditures on its own charitable activities. For this reason, we do not accept the Foundation's representations in this regard, and maintain our position that the Foundation was intentionally delaying expenditures on charitable activities by appearing to make gifts to other registered charities.

Regarding the Foundation's reference to the case *Richert v. Stewards Charitable Foundation* (BCTC 2005 211)²⁰, in our view the facts from that case are not congruent with the facts of the Foundation's case.

In the case of *Richert v. Stewards Charitable Foundation* (BCTC 2005 211), Mr. Richert purchased a \$1,000 ticket to attend a Stewards Charitable Foundation's luncheon. He received an official donation receipt in the amount of \$855, which was his \$1,000 less the \$145 value of the luncheon and a book that he received from Stewards Charitable Foundation. Mr. Richert was not satisfied with the value of the official donation receipt and desired a \$1,000 receipt (i.e., the purchase price of the ticket to the luncheon). As Stewards Charitable Foundation refused to re-issue the donation receipt, Mr. Richert sued for return of his \$1,000. The judge ruled that Stewards Charitable Foundation cannot return the \$1,000 since it was a gift. This was contrary to Mr. Richert's position that the \$145 advantage was consideration and had invalidated the gift. The \$145 advantage that Mr. Richert received was, in the judge's view, a gift from Stewards Charitable Foundation to Mr. Richert (in appreciation for his \$1,000) rather than consideration flowing back to Mr. Richert.

While the Foundation uses the term "reciprocal gifts" to describe the transactions between Mr. Richert and Stewards Charitable Foundation, these transactions are better described as a donation to a charity that resulted in an advantage provided to the donor. When a donor makes a gift to a qualified donee and receives an advantage in return for the gift, there are split-receipting rules which must be followed by the charity when it issues the official donation receipt to the donor. That is the primary concern addressed in the case referenced by the Foundation.

Accordingly, it is our view that the arguments raised in *Richert v. Stewards Charitable Foundation* (BCTC 2005 211) are unrelated to the concerns we have identified throughout our audit of the Foundation, as we are not presently considering a receipting-related issue. Rather,

²⁰ We refer to this case as "the Richert case" throughout the remainder of this appendix.

we are considering amounts transferred between multiple qualified donees; none of which required an official donation receipt to be issued.

Furthermore, the advantages in the form of donations that the qualified donees received during their participation in the series of transactions, were similar to the supposed gifts that they had transferred to the other qualified donees.²¹ As such, we maintain our view that the amounts transferred by the qualified donees to each other, including those transfers made by the Foundation, were not gifts as none of the transactions meet the “Intention to give” requirements that are legislated in subsection 248(30) of the Act.

We maintain our position that the Foundation entered into the [REDACTED] share transactions in order to avoid or delay expenditures on charitable activities, and that these transactions do not constitute as charitable activities²² for the purposes of the DQ requirement calculations which is a revocable offense under paragraph 149.1(4.1)(a) of the Act.

We also maintain our position that a purpose of the Foundation partaking in the series of transactions was to assist other registered charities in avoiding and/or delaying expenditures on their own charitable activities, which is a revocable offense under paragraph 149.1(4.1)(b) of the Act. Accordingly, we are recommending that the Foundation be revoked in the manner provided in paragraph 168(1)(b).

Gifts not at arm’s length

In the first AFL, we informed the Foundation that we were of the view that the \$4,000,000 gift that the Foundation made to Chimp should not be included as a charitable expenditure in the Foundation’s calculation of its DQ requirements. In that letter, we explained that this gift should not be considered as a charitable expenditure due to the not at arm’s length relationships between the Foundation, the entities that gifted money to the Foundation²³ and Chimp itself.

Specifically, we concluded that the Foundation received funds from entities not at arm’s length, and that the \$4,000,000 it gifted to Chimp was a gift made to a not at arm’s length qualified donee. Hence, the requirements per paragraph 149.4(4.1)(d) have not been met.

Pursuant to paragraph 149.1(4.1)(d) of the Act, if a registered charity receives a gift from another registered charity with which it does not deal with at arm’s length, then the charity that received the gift must either expend before the end of the following fiscal period - in addition to its DQ - the gifted amount on its own charitable activities or gift the gifted amount to an arm’s length qualified donee.

The first representations stated that the first AFL did not include enough evidence to support our conclusion that all of the entities in the series of transactions were not acting at arm’s length with

²¹ The advantages being the net gain to the charitable sector resulting from each of the qualified donees partaking in the series of transactions. As explained above, steps 1-4 of the series of transactions resulted in a negligible financial advantage to the charitable sector.

²² As gifts to qualified donees.

²³ \$2,500,000 received from Timothy Foundation and \$2,250,000 received from Association for the Advancement of Scholarship.

one another. In the second AFL, we provided a detailed explanation for how we had determined that all of the entities were acting at non-arm's length.

Foundation's response

In the second representations the Foundation did not refute the non-arm's length relationships that the CRA had identified in the second AFL. The only reference made to the term "not at arm's length" is where the Foundation has written that "if the Foundation had not participated [in the ██████ share transactions], it would not have had the expenditure requirements CRA is alleging flowing from gifts which were not at arm's length." We have interpreted this to mean that the Foundation agrees with both our analysis and conclusions in regards to the fact that by agreeing to participate in the series of transactions, all of the entities – including the Foundation – were acting not at arm's length with each other for the purpose of completing the series of transactions.

CRA's response

The Foundation has not provided any information or explanation to support that it was not acting at non-arm's length with the other entities in the aforementioned tax planning arrangement when it partook in the series of transactions. As we have concluded that the transactions between the entities involved in the series of transactions were not gifts, however, neither subsection 188.1(12) nor paragraph 149.1(4.1)(d) of the Act are applicable.

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

In the first AFL we informed the Foundation that we were of the view that the Foundation incorrectly filed its T3010, Registered Charity Information Return. Specifically, we noted that the amount reported on line 5050, total amount of gifts made to all qualified donees, was incorrect. As previously discussed, we were of the view that the Foundation's \$4,712,500 transfer of funds to Paraklesis was not legally a gift. Accordingly, it should have been reported under line 4640, revenue from sale of goods and services – and not on line 5050.

Further, we informed the Foundation of our concerns with reporting that the ██████ shares were capital assets. We explained that in our view the shares should have been reported as short-term assets as, due to the pre-arranged transfer of the ██████ shares to Paraklesis, the Foundation knew that it would not be owning the shares for long.

In the first representations, the Foundation explained that by reporting the ██████ shares as capital assets, it was merely following professional advice when it completed its T3010 Information Return. The Foundation further explained that, despite our assertions to the contrary, it remained of the view that the transaction should be considered as a gift to a qualified donee.

In the second AFL, we explained that in our view it was not reasonable for the Foundation to argue that the ██████ shares be classified as capital assets of the Foundation at any point in time. We explained that, regardless of any professional advice it received on the matter, the

Foundation itself knew that it only owned the shares for nine days and received no long-term benefit from owning them.

Further, in the second AFL we noted that the Foundation, in the first representations, acknowledged that the \$4,735,985 cash that it received from Paraklesis was from sales of goods and services. Accordingly, and as explained in the first AFL, this amount should have been reported on line 4640, total of sale of goods and services. The Foundation did not report anything on line 4640 but rather \$10,236,479 (which would include the \$4,735,985) on line 4510, total amount received from other registered charities.

Foundation's response

In the second representations, the Foundation maintained its position that it had followed professional advice when completing its information return. However, unlike in the first representations, the Foundation acknowledged that some of the professional advice, referred to above, led to inaccuracies in the Foundation's T3010. The Foundation indicated that in its view the CRA should write an education letter to address this non-compliance concern rather than revoke the Foundation's registration.

CRA's response

The Foundation was aware of its reporting obligations. The Foundation knew or ought to have known that completing the information return with the information and amounts that it did was not accurate, and hence the Foundation is non-compliant with the requirements of the Act.

It remains our view that reporting the transfer of funds to Paraklesis as a gift was an intentional misrepresentation of the facts by the Foundation. Similarly, as previously discussed in this appendix, it remains our view that these misrepresentations were made to enable the Foundation to meet its DQ requirements.

Accordingly, we maintain our position that revoking the Foundation's registration in the manner described in paragraphs 168(1)(c) of the Act for failing to file an accurate information return is a reasonable manner to address this non-compliance.

Conclusion:

For the reasons explained above and in our letters dated January 8, 2020, and March 2, 2021, it is the CRA's position that the Foundation has failed to meet the requirements for registration as a public foundation as outlined in subsections 149.1(1) of the Act. As such, the Organization should have its registration as a charity revoked pursuant to subsection 168(1) of the Act.

Qualified Donees

149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

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

(ii) a municipality in Canada,

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

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

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

(b) a registered charity,

(b.1) a registered journalism organization,

(c) a registered Canadian amateur athletic association, or

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

149.1 (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.