



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Malachi 3:10 Foundation
Suite 200, 2296 McCallum Road
Abbotsford BC V2S 3P4

APR 27 2010

BN: 87065 8341RR0001

Attention: Mr. Ian Worland

File #: 3010864

**Subject: Notice of Intention to Revoke
Malachi 3:10 Foundation**

Dear Mr. Worland:

I am writing further to our letter dated January 21, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Malachi 3:10 Foundation (the Organization) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated February 19, 2009. Notwithstanding your reply, our concerns with respect to the Organization's failure to devote all of its resources to its charitable purposes, failure to issue receipts in accordance with the Act and/or its Regulations and failure to maintain adequate records as required by the Act, have not been alleviated. The basis for our concerns is explained below.

Failure to Devote all of its Resources to Charitable Purposes

Based on the Canada Revenue Agency's (CRA) audit of the Organization, we discovered that the Organization has primarily operated for the private benefit of a corporation seeking to dispose of their farm assets. Per our previous letter, the Organization entered into a number of transactions, along with another Canadian registered charity, to facilitate the sale of the corporation's farm assets (land, improvements, machinery, equipment, inventories and milk quota). The Organization's role in the arrangement was to purchase the shares of the corporation; however, when the assets of the corporation were sold to another corporation, the shares of the corporation had little value. As a result, the Organization wrote-down the share value from over \$2.3 million to \$530 at year-end.¹

¹ Refer to Appendix "A" of our January 21, 2009 letter, outlining the series of transactions entered into by the Organization, the actions taken by the Organization and the resulting profit earned for its role in the arrangements.

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor R350 E (06)
Ottawa ON K1A 0L5

Your letter of February 19, 2009 states that "[a]lthough the transactions themselves were not charitable activities, it would be impossible for a registered charity to carry out charitable activities if it had no funds with which to do so."² While we agree with this statement generally, in order to maintain their registered status, charitable organizations are required to operate within the confines of the *Income Tax Act*. These restrictions require registered charities to operate for exclusively charitable purposes, rather than non-charitable or private purposes, and require registered charities to devote all of their resources to charitable activities carried on by the organization themselves or by way of gifts to qualified donees. This latter requirement specifically prohibits registered charities from gifting their funds to non-qualified donees such as private corporations.

In your submission you note that the Organization received a net benefit of \$375,000³ from these transactions and that the Organization "caused the company to gift its property to a registered charity in a tax efficient manner". We do not agree with your characterization of the transactions. With respect to the Organization itself, in our view, rather than devoting *all of its resources to charitable activities carried on by it*, the Organization inappropriately disposed of \$2.3 million to acquire shares it knew were valueless or about to become valueless.

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

- The Organization disbursed \$2.3 million to purchase shares which were later written down to zero.
- \$1.8 million in assets were distributed from the corporation to another participating charity, a tax receipt of \$1,800,000 was issued; and these funds were gifted to the Organization by the other participating charity;
- After repaying loans associated with the purchase of the shares, property worth \$375,000 was retained by the participating charities while a tax receipt of \$1,800,000 had been issued and substantially all of the proceeds were retained by the sellers of the property.

² The representations further state that the Organization "expended almost \$700,000 on charitable activities, including over \$300,000 distributed to unrelated qualified donees." This indicates the Organization distributed 58% of its total charitable expenditures to related charities, i.e. charities participating in the same tax planning arrangement.

³ We further disagree that the Organization's net benefit received for participating in the tax planning arrangement was \$375,000 as per your reconciliation provided on April 14, 2009. The reconciliation is based on the amounts that remain outstanding as a result of the () transaction. Due to the interconnectedness and non-arm's length relationships between many of the parties owing monies to or from the Organization, there is a legitimate concern that the funds due to the Organization will not materialize. We also believe that any benefit the Organization would be entitled to receive would be reduced by all of the expenses incurred pertaining to the () transaction such as legal, interest, consulting, and professional fees.

It is our continued position that the Organization's **primary purpose** during this period was **to facilitate a private tax planning scheme** – notably for the benefit of private individuals and corporations including **_____** a company owned by Mr. John Glazema. Further, by **inappropriately disbursing charitable funds to purchase shares which it knew were to be devalued to zero**, it is our view that the Organization has **conferred a private benefit on that corporation, effectively by gifting its assets away**, and therefore has contravened the Act.

We also do not accept your submission that most of the expenditures incurred by the Organization were to further the charitable purposes of the Organization. It is our view that the primary purpose of the transactions was to facilitate the private tax planning of individuals and their corporations with an incidental benefit to the Organization (and, in our view, a net loss to the sector if one considers charitable funds lost through the deliberate write-down of investments). *Per* our previous letter, during the audit period, the Organization paid over \$38,000 for invoices incurred by and issued to other corporate entities or for non-charitable purposes. As you have concurred, the tax planning farm transaction was not a charitable activity; all the expenditures incurred for this activity are not considered charitable. It is therefore our conclusion that the expenditures reported by the Organization were not expended for charitable purposes.

By structuring its operations and utilising its assets for the private benefit of individuals and corporations, as described above, it is our view that the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) as a charitable organization, all the resources of which are devoted to charitable activities carried on by it. Under paragraph 168(1)(b) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with the requirements of the Act for its registration as such. For this reason, there are grounds for revocation of the charitable status of Malachi 3:10 Foundation under paragraph 168(1)(b) of the Act.

Issuing Donation Receipts not in Accordance with the Act and/or its Regulations

Regarding the issuance of official donation receipts to qualified donees, official donation receipts bear a charity's registration number and other information required by the Act for tax deduction or credit purposes only. Therefore, official donation receipts should not be issued to a qualified donee; however, a charity may issue receipts to acknowledge gifts it has received from other registered charities as long as those receipts are distinct from the official donation receipts.

Under paragraph 168(1)(d) of the Act, the Minister may revoke the registration of the registered charity because it has issued a receipt for a gift or donation otherwise than in accordance with the Act and the regulations or that contains false information. For this reason, there are grounds for revocation of the charitable status of Malachi 3:10 Foundation under paragraph 168(1)(d) of the Act.

Failure to Maintain Adequate Books and Records

Per our previous letter, the Act requires registered charities to maintain books and records to determine whether there are grounds for the revocation of its status under the Act, and other information to enable the Minister to verify the donations made to it for which a deduction or tax credit is available under the Act.

It remains the view of the CRA that the Organization has not maintained sufficient books and records. As noted in our previous letter:

- payments for fees and legal expenses were not supported by documentation to demonstrate the nature and purpose of expenses;
- Documentation was not maintained to support the issuance of official donation receipts. During the course of the audit the Organization was unable to provide information regarding the issuance of a \$200,000 receipt. As you are aware, this donation related directly to a series of other transactions and, as such, the Act requires the Organization to maintain documentation regarding its relation to those transactions to enable the CRA to determine whether the gift is a valid one. This is especially so, given that the Organization incurred, but did not document, \$200,000 to acquire this gift;
- Board minutes were not maintained to demonstrate the consideration of the transactions in which the Organization was involved nor the expenditures incurred by the Organization.

Again, we note that in 2007, substantially all of the Organization's activity revolved around the \$2,200,000 purchase of a private company's shares and the sale of its assets. Further, the Organization engaged in a series of transactions with companies related to directors, incurred loans, and lent monies. The Organization incurred professional and consulting fees associated with these transactions totalling \$84,517. The Organization made gifts to qualified donees totalling \$142,105 and, according to your letter, authorized a number of charitable transactions. In our view, the Organization would therefore be required to document the board's discussion and approval of these transactions – particularly the major ones – and how the expenses and disbursements further the Organization's charitable purpose of providing support services to families and children in times of crisis. On the tax planning transactions, it is clear that the Organization should be able to show how it reviewed and analyzed the purchase of shares (particularly around the risk of acquiring the shares), the discussion and review of the engagement of counsel and accountants, discussion around potential for conflict of interest in transacting with non-arm's length corporations, discussion and approval of loans totalling in the millions of dollars and other similar issues.

In short, we remain of the position that the Organization has not maintained adequate books and records. While we agree that an organization cannot supply what it does not have, it does not exempt the Organization from the requirement that these be maintained.

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

Under paragraph 168(1)(e) of the Act, the Minister may revoke the registration of the registered charity because it has failed to comply with or contravenes any of sections 230 to 231.5 of the Act. It is our position the Organization has contravened section 230 of the Act for failing to maintain complete records to support the issuance of tax receipts, to verify the information contained within its Registered Charity Information Returns and financial statements, and to demonstrate whether there were grounds for the revocation of its status under the Act. For this reason, there are grounds for revocation of the charitable status of Malachi 3:10 Foundation.

Appropriateness of Revocation

Finally, we note that your letter argues, "In our view, many of the allegations set out in your letter are unfounded." We disagree. As discussed above, the Organization has failed to demonstrate that it operates exclusively for charitable purposes. Instead, the Organization operates for the personal benefit of individuals and a corporation involved in abusive tax planning arrangements and has lent its resources and tax-receipting privileges to facilitate these personal benefits. The Organization has acquired over \$2.2 million in shares and \$1.8 million in "gifts" from another registered charity; yet, it has devoted only 4% or \$174,300 to charitable activities since 2004. The Organization has also breached numerous other requirements of the Act and therefore it is the CRA's position that these breaches are serious contraventions of the Act and warrant the revocation of the Organization's registered status.

Conclusion:

The Canada Revenue Agency's (CRA) audit had revealed that Malachi 3:10 Foundation (the Organization) operated primarily for the personal benefits of a corporation and its shareholders seeking to dispose of its assets. It has failed to issue official donation receipts in accordance with the *Income Tax Act* (the Act) and failed to maintain and/or provide adequate records. For all of these reasons, and for each of these reasons alone, it is the position of the CRA that the Organization's registration should be revoked.

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

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

Business Number	Name
870658341RR0001	Malachi 3:10 Foundation Abbotsford BC

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

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

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

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

Consequences of Revocation

As of the effective date of revocation:

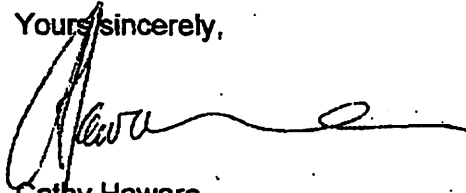
- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the

Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation can be found in Appendix "A", 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* (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 contact GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Cathy Hawara
A/Director General
Charities Directorate

Attachments:

- Our letter dated January 21, 2009;
- Your letter dated February 19, 2009;
- Appendix "A", Relevant provisions of the Act

cc: Mr. John Glazema