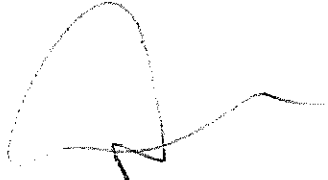


LHR

This is Exhibit "~~E~~" referred to in the affidavit of Vivian Krause sworn before me at Vancouver, B.C. this 16th day of November, 2023.

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a smaller, more intricate flourish.

A Commissioner for taking Affidavits within British Columbia

Canada Revenue
AgencyAgence du revenu
du Canada

AUG 02 2013

REGISTERED MAIL**Association for the Advancement of Scholarship**
[REDACTED]**Attention:** [REDACTED]

BN: 88741 7806RR0001

File #: 3023700

Subject: Notice of Intention to Revoke
Association for the Advancement of Scholarship

Dear [REDACTED]

I am writing further to our letter dated July 3, 2012 (copy enclosed), in which you were invited to submit representations as to why the registration of Association for the Advancement of Scholarship (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered the written response dated September 7, 2012, provided by [REDACTED] on behalf of the Organization. However, notwithstanding his reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion:

The Canada Revenue Agency's (CRA) audit has revealed that the Organization is not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization did not devote all its resources to charitable purposes and activities; failed to meet its disbursement quota; failed to maintain proper books and records; and failed to file the T3010, *Registered Charity Information Return*, as required by the Act. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated July 3, 2012, I wish to advise you that, pursuant to subsections 168(1) and 149.1(2) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor^{R350 E (08)}
Ottawa ON K1A 0L5

- 2 -

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), and 168(1)(e), and paragraph 149.1(2)(b) 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
887417806RR0001	Association for the Advancement of Scholarship Vancouver BC

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

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

Notwithstanding the filing of an Objection, 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.

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

Consequences of Revocation

As of the effective date of revocation:

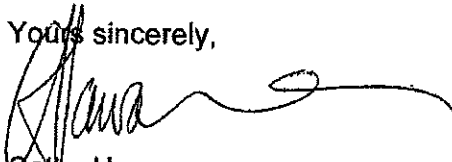
- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;

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- 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 "B" 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 Web site 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*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated July 3, 2012;
- Your representations dated September 7, 2012;
- Appendix "A", Comments on Representations; and
- Appendix "B", Relevant provisions of the Act

c.c.:



ITR APPENDIX "A"**Association for the Advancement of Scholarship****Comments on Representations of September 7, 2012**

Based on the Canada Revenue Agency's (CRA) audit of Association for the Advancement of Scholarship (the Organization), the Organization primarily operates for transferring funds to non-qualified donees and participating in a donation arrangement benefitting a private individual. As described in the balance of this letter, and in our letter of July 3, 2012, the Organization is failing to devote resources to charitable activities; is in serious breach of the requirements for registration under the *Income Tax Act* and its registration should be revoked.

1. Failure to Devote Resources to Charitable Activities

Our audit revealed that a significant portion of the Organization's resources were not utilized for charitable activities carried on by the Organization itself. The Organization was registered, in part, to award scholarships, fellowships, bursaries and prizes to persons; to develop, fund, administer, promote and carry on activities and programs to advance the theory, practice and delivery of education; and to develop, fund, administer, promote and carry on activities, programs and facilities that will develop compassionate humanitarian assistance, relief, care, treatment, education and training to relieve poverty and suffering and improve the quality of life for needy persons and improve economic and health conditions in poor communities. Our audit revealed little to no activities being conducted with respect to these registered objects.

In your representations of September 7, 2012, a number of observations about the Act and its Regulations were provided. We agree that proposals to amend subsections 149.1(2), (3) and (4) of the Act¹ were not been enacted at the time our previous letter was issued nor at the time you responded, therefore, the CRA is not relying on this legislation as grounds for revocation.

The representations state that, "there is no prohibition against a registered charity making a gift to an organization that is not a qualified donee, as long as that gift does not otherwise contravene the Act or regulations." Your representations reference the settlement proceedings (the Wolfe settlement) made in the Ontario Superior Court of Justice between The Wolfe and Millie Goodman Foundation² (the Foundation) and the CRA. The Foundation submitted that funding other charities is a charitable purpose at common law. The settlement minutes state that as long as the Foundation met its annual disbursement quota, CRA would permit it to disburse no more than 10% of its annual disbursements to non-qualified donees. As this case applies to the definition of a charitable foundation, and not to the definition of charitable organization, we do not regard this case as standing for the proposition that a charitable organization may make gifts to non-qualified donees. It is our position the Organization has failed to meet the definition of a charitable organization as per subsection 149.1(1) of the Act as discussed below.

¹ Bill C-48, short title *Technical Tax Amendments Act, 2012*, received Royal Assent June 26, 2013.

² The Foundation was a private foundation at the time of the settlement.

Gifts to Non-qualified Donees

X Prize Foundation (XPF)

Per our previous letter, we understand that the Organization signed an agreement with XPF, a non-profit organization registered under 501(c)(3) of the Internal Revenue Code in California, U.S., with the intent to implement the main program of XPF in Canada. The objective of signing the agreement was to purchase certain licensing rights and intellectual property from XPF to implement the program in Canada. [REDACTED]

[REDACTED] the Organization terminated the agreement with XPF and did not make any further payments to XPF nor did XPF return the earlier payments to the Organization.

It remains our position the funds provided by the Organization to XPF were amounts given to a non-qualified donee instead of amounts devoted to the Organization's own activities. The representations submit that "[the Organization] entered into an appropriate agency agreement with X Prize Foundation ("XPF") and therefore the amounts in question were expended by it in carrying out its own activities and should be regarded as a devotion of its resources to its own activities."

The Federal Court of Appeal (FCA) has confirmed³ that a registered charity working with an intermediary must control the activities carried out on its behalf, and over the use of its resources. As such, the CRA recommends that a charity enter into a properly structured written agreement with any intermediary to help demonstrate that the charity maintains direction and control over the charitable activities and resources carried out by the intermediary.

Our audit did not indicate there was any agency agreement under which the XPF would act as an intermediary to conduct charitable activities on behalf of the Organization. Rather, we were provided with the copy of an agreement under which the Organization would purchase certain licensing rights and intellectual property from XPF for \$4.9 million USD (of which \$3 million USD⁴ was paid). Therefore, we are uncertain as to what agreement you are referencing as being the "agency agreement" in your representations. Whether the Organization had devoted resources to its own charitable activities is a question of fact and law, which cannot be determined based solely on an agency agreement even if one exists. Per our audit, the Organization transferred \$3 million USD to XPF without receiving any property or service in return. There was no indication that any charitable activity of the Organization was undertaken as a result of the \$3 million USD payment nor were we presented with any representations or documentation demonstrating the Organization's on-going control over the activities XPF was to be conducting pursuant to the agency

³ For example, *Canadian Committee for the Tel Aviv Foundation v. Canada* 2002 FCA 72, *Bayit Lepletot v. Minister of National Revenue* 2006 FCA 128 and *Canadian Magen David Adom for Israel v. Minister of National Revenue* 2002 FCA 323

⁴ Total cost \$3,372,300 CAD; \$324,000 in currency exchange difference and \$48,300 paid to Benefic Group Inc. for services rendered regarding this transaction.

agreement. As indicated by its legal representative, [REDACTED] the Organization ultimately considered the amount to be a gift to XPF.

Your representations ask that, "if amounts that [the Organization] paid are not regarded as expenditures on charitable activities carried on by it, certain of those payments were payments to a qualified donee, for the reasons set out below with reference to section 501(c)(3) of the Internal Revenue Code ("IRC") and U.S. charitable organizations." We cannot accept this alternative for the following reasons.

XPF does not meet the definition of a qualified donee under subsection 149.1(1) of the Act. CRA's position regarding the application of paragraph 7 Article XXI of the Canada-US Tax Convention was summarized in Technical Interpretation 9728355(E) and Registered Charity Newsletter No. 6-1, August 1996. In our view, paragraph 7 of the Treaty (then paragraph 6) outlines a limited situation whereby a gift to certain US charities are eligible to the limited relief from Canadian taxation described in that section as if they were made to a Canadian registered charity. The CRA has been clear that its interpretation is that the treaty does not deem US charities to be registered charities for the purposes of the Act such that the US charity could be considered a "qualified donee." We have reviewed your representations in this regard; however, your representations have not convinced us that we should deviate from the position established in the aforementioned Technical Interpretation. Therefore we maintain that the Organization has made a gift to a non-qualified donee, other than in accordance with the Act.

We note, in passing, that it is not at all clear that XPF would necessarily qualify under this provision, even were we to agree that the Canada-US Tax Treaty acted to deem a tax exempt entity as a qualified donee (which we do not). It is not apparent that XPF could qualify as a charity if it were resident in Canada and created or established in Canada, as required by the Treaty [REDACTED]

Finally, your representations referred to *Prescient Foundation v Canada (National Revenue) 2013 FCA 120*⁵, where a similar issue was considered by the FCA. In *Prescient Foundation*, the FCA commented that the CRA had recognized in the Wolfe settlement that a gift to a foreign charity is a charitable purpose. However, we maintain that neither the Wolfe settlement nor the FCA's comments in *Prescient Foundation* regarding the making of a gift to a foreign charity by a charitable foundation apply to the legislative requirements which apply to charitable organizations. A "charitable organization" must devote all its resources to charitable activities carried on by the organization itself. Under paragraph 149.1(6)(b), a "charitable organization" is considered to be devoting its resources to charitable activities carried on by it to the extent that it disburses no more than 50% of its income in a year to qualified donees. Hence, while at common law a gift of \$3 million USD to XPF may be in furtherance of a charitable purpose, it is our view that the Act nonetheless prohibits a charitable organization from making such a gift as it is neither a devotion of resources to charitable activities carried on by the organization itself nor is it a gift to a qualified donee (as permitted under paragraph 149.1(6)(b)). Therefore, it remains our position that the Organization, which is a charitable organization under the Act, has failed to devote all its

⁵ We note that the FCA did not comment on the question of whether a 501(c)(3) organization is considered a "qualified donee" as a result of the Canada-U.S. Tax Convention.

financial resources without benefitting itself or furthering its charitable purposes. It is therefore our position that the Organization failed to devote its resources exclusively to charitable activities carried on by it as was required under subsection 149.1(1) of the Act. As such, there are sufficient grounds to revoke the charitable registration of the Organization under paragraph 168(1)(b) of the Act.

2. Disbursement Quota Shortfall

We have reviewed your representations with respect to the disbursement quota shortfall we re-calculated as a result of our audit; however, your representations did not provide any information that would cause us to alter our position. No representations were made regarding the improperly reported \$15 million gift of enduring property nor were documents provided to indicate we erred in our findings. Additionally, even if we were to conclude the amount transferred to XPF was a gift to a qualified donee, which we do not, the Organization would still have a significant disbursement quota shortfall. Therefore, we maintain that the Organization has failed to meet its disbursement quota obligation as per paragraph 149.1(2)(b) for the taxation years under audit and this is grounds for revocation.

3. Failure to Maintain Adequate Books and Records

Per our letter of July 3, 2012, we noted the records maintained by the Organization were inadequate to support the information reported on its T3010, *Registered Charity Information Return*, and its financial statements. Our main concerns with the inadequate records was the lack of documentation supporting the valuation of the [REDACTED] shares, the Misery Pipes royalty interest, and the Quest University Canada naming rights as well as the lack of documentation to support the expenses paid on behalf of Quest University Canada.

We agree with your statement that there is no provision in the Regulation or the Act to require the Organization to obtain an appraisal to determine an accurate valuation; however, as you are aware, sections 110.1 and 118 of the Act both reference fair market value when speaking to the deduction for gifts. Black's Law Dictionary defines fair market value as "the price a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction." It is the CRA's general advise that if fair market value of donated goods exceeds \$1,000, we strongly recommend the property be appraised by someone who is not associated with either the donor or the charity receiving the gift (i.e., a third party). The person who determines the fair market value of the property must be competent and qualified to evaluate the particular property. This approach would also apply to acquiring or selling property to ensure the charity is paying or receiving a fair price for the property and thereby utilizing the charity's resources prudently. Without evidence to the contrary, we are unable to ascertain that the values recorded by the Organization for the shares acquired and sold or the amount paid for naming rights are the factual fair market values of the property being acquired or transferred. Your representations state the directors obtained legal advice in connection with the above; however, it appears they chose not to provide said advice during the course of our audit. Accordingly, our position remains the Organization has failed to maintain the records necessary to verify the value of the property.

The Organization submitted no representations or documentation to support why it paid \$324,000 of expenses on behalf of Quest University Canada. As such, our position remains that the Organization failed to maintain adequate records.

It is our position the Organization has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its T3010 and financial statements. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

4. Failure to File an Accurate T3010, Registered Charity Information Return

Our position remains unchanged regarding the inaccuracies reported on the T3010s filed and the fact that the information returns were consistently late filed. We acknowledge your representations that although the information returns were late filed, they were accepted as being filed by the CRA; however, this does not alter our findings that the Organization is failing to respect subsection 149.1(14) of the Act. The Organization did not present representations regarding the inaccuracies reported on the information returns filed.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file a *Registered Charity Information Return* as and when required under the Act or a Regulation. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(c) of the Act.