



July 21, 2022

REGISTERED MAIL

Scott Cousens
Director
Fortius Foundation
[REDACTED]

BN: 835780958 RR0001
File number: 3037178
[REDACTED]

Dear Scott Cousens:

Subject: Notice of intention to revoke

We are writing with respect to our letter dated September 7, 2021 (copy enclosed), in which Fortius Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from October 1, 2014 to September 30, 2016. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written responses dated November 15, 2021 and November 17, 2021. Your reply has not alleviated our concerns with respect to the Organization'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 Organization is not complying with the requirements set out in the Act. Although the Organization corrected its previous non-compliance, it committed multiple new serious breaches of the Act which demonstrates a continuous pattern of non-compliance. In particular, the current follow-up audit found that the Organization is not constituted and operated exclusively for charitable purposes, failed to devote resources to charitable activities carried on by the Organization itself, failed to maintain adequate books and records, failed to issue donation receipts in the accordance with the Act and/or its Regulations, and failed to file an information return as and when required by the Act and/or its Regulations. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated September 7, 2021, and pursuant to subsections 168(1) and 149.1(3) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. 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), 168(1)(c), 168(1)(d), 168(1)(e), and paragraph 149.1(3)(b.1) 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
835780958RR0001	Fortius Foundation Vancouver BC

In addition, due to the egregious and continuous 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 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) and 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 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 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 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 P. Khare

Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act
- CRA letter dated September 7, 2021
- Organization's representations dated November 15, 2021 and November 17, 2021

Fortius Foundation
Comments on Representations

In the administrative fairness letter (AFL) dated September 7, 2021, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from October 1, 2014 to September 30, 2016, identified that Fortius Foundation (the Organization) is not operating in compliance with the provisions of the Income Tax Act (the Act) in the following areas:

1. It is not constituted and operated exclusively for charitable purposes
2. Failed to devote resources to charitable activities carried on by the Organization itself
3. Failed to meet disbursement quota
4. Failed to maintain adequate books and records
5. Failed to issue donation receipts in accordance with the Act and/or its Regulations
6. Failed to file an information return as and when required by the Act and/or its Regulations

We have reviewed and considered the representations of both November 15, 2021, and November 17, 2021, and we maintain our position that the non-compliance issues identified during our audit, with the exception of our position on the Organization's failure to meet the disbursement quota, represent a serious breach of the requirements of the Act. As a result of this non-compliance, the Organization's registration as a charity should be revoked.

Although we maintain our position that each of the section 188.1 penalties we discussed in our previous letter are applicable and could be assessed from a technical perspective,¹ we will not be assessing any of the penalties as a result of the current audit given that we are now informing the Organization of our intention to revoke its status as a registered charity.

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

- A summary of the issues raised in our AFL dated September 7, 2021;
- A summary of the representations provided by the Organization dated November 15, 2021, and November 17, 2021; and
- The CRA's response to the representations.

1. It is not constituted and operated exclusively for charitable purposes

As outlined in the AFL, the CRA is of the view that the Organization is not constituted and operated exclusively for charitable purposes, rather it is operating for an unstated, non-charitable purpose, namely enabling a non-qualified donee to use charitable assets. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

¹ 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.

The Organization's representations:

The Organization stated in its letter of November 15, 2021 (the Representations) that it did not have any unstated purposes. It did report revenues of \$22,978,361, and it owned the building with the intention of earning income from the property. It had every intention of collecting lease payments set at fair market value (FMV) rather than enabling a non-qualified donee to use charitable assets without providing consideration set at FMV in return.

CRA's findings:

While it is true that revenue was reported, as outlined in the AFL, the Organization did not in fact collect the lease payments. The revenue reported was accrued rent receivable that was never collected. While we agree that the Organization was constituted for a charitable purpose,² it was not operated for charitable purposes. The intention to collect lease payments is not enough when the activity did not in fact generate any appreciable public benefit.

As we stated in the AFL, the Organization's revenues (and ability to fund qualified donees in the future) is dependent upon the non-qualified donee Fortius Athlete Development Association (FADA) and the rent receivable. Absent another revenue source, or demonstration that the expenses have been reduced so much that they can be covered by revenues other than rent, we cannot conclude that the Organization is in a position to fund other qualified donees. We have not been provided with either another revenue source, or an analysis of expenses, and accordingly we maintain our position that the Organization operated to benefit FADA at the expense of the Organization's charitable mandate of gifting to qualified donees.

2. Failed to devote resources to charitable activities carried on by the Organization itself

As outlined in the AFL, the CRA is of the view that by gifting funds to non-qualified donees and loaning funds to a non-qualified donee at below fair-market terms, the Organization provided unacceptable private benefits. As a result, the Organization failed to meet the requirement of section 149.1 of the Act that it devote its resources to charitable activities carried on by the Organization itself. As such, there are grounds for the Minister to revoke the charitable status of the Organization in the manner as described under section 168 of the Act.

Additionally, it is the CRA's view that the above mentioned unacceptable private benefits are also considered to be undue benefits as described in subsection 188.1(5) of the Act. As such, there may also be grounds for the Minister to sanction the Organization under subsection 188.1(4) of the Act.

The Organization's representations:

The Organization stated in the Representations that it did not intend to make a gift to FADA. It was unaware that letting the limitation period expire would impair its ability to collect rent from

² "to solicit and receive gifts, bequests, trusts, funds and property, and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property, for the purpose of disbursing funds and property exclusively to registered charities and "qualified donees" under the provisions of the Income Tax Act."

FADA, and that it is not in agreement with the CRA's interpretation of the Limitations Act that the expiry of the limitation period means that it cannot collect.

The Organization further stated that the limitation period had not expired during the audit period and therefore it would not be fair to raise issues of expiry of the limitation period when it happened outside the audit period.

Finally, the Organization stated that it does not agree that a failed commercial arrangement should be considered a private benefit for purposes of revocation; however, it did not provide the reasons for its position. The Organization only alleges that for decades to come the land acquired by the Organization and the facilities it built will achieve a public benefit for the people of Burnaby.

The Organization stated that it does not agree that a penalty for undue benefits is warranted, but did not provide any arguments in support of this position.

The Organization further stated that in hindsight it understands why the CRA found the loans to Fortius Institute (the Institute) unacceptable. It is willing to enter into a compliance agreement to cease such activities in the future.

CRA's findings:

We maintain our interpretation of the Limitations Act. Although there is nothing preventing FADA from repaying the Organization should it voluntarily decide to, the Organization has no legal recourse to insist on payment. In our view, the Organization willingly ceased to have legal control over its own financial resources in this regard.

Furthermore, as a result of this, we have concluded that the outstanding rental amounts were effectively given to FADA as a gift, since FADA can no longer be required to pay. This is independent of any intentions of the Organization, or FADA, and arises from the expiry of the limitation period. Given the large dollar values involved (\$11,900,003) this is a significant private benefit provided to FADA.

As explained in the AFL, at common law a private benefit means a benefit provided to a person or organization that is not a charitable beneficiary, or a charitable beneficiary where a benefit goes beyond what is considered to be charitable. FADA is not a charitable beneficiary and hence, in our view, the benefit discussed above is a private benefit.

The separate concept of an undue benefit is defined under subsection 188.1(5) of the Act. An undue benefit means a benefit provided by a charity to a person who does not deal at arm's length with the charity. Hence, in addition to being a private benefit, the outstanding rental amounts are also an undue benefit given that the Organization and FADA are not at arm's length with one another.

While we have considered circumstances outside the audit period, this is circumstantial evidence of the Organization's intentions during the audit period. In our view, the Organization was not

concerned with collecting its debt from FADA and did not take any steps, in the audit period or subsequently, to ensure that it would have an adequate source of income to gift to qualified donees. There was no audit evidence or documentation to demonstrate efforts were made to collect the outstanding amounts. This further supports the position that the Organization made a material gift to FADA. Although a gift to FADA may not have been intended, that was the effect of the Organization's actions.

We maintain our position in regards to the existence of unacceptable private benefits and that this is a reason for the Organization's status as a registered charity to be revoked. As stated in the AFL, we are particularly concerned that no collection action was taken by the Organization and no record exists of how the Organization came to the conclusion that no collection action was warranted or how the Organization made a logical and reasoned conclusion that FADA will pay the rent owed without the need for collection action. We still have not been provided with any explanations for why the Organization made these decisions.

Accordingly, we maintain our position that an inappropriate private benefit was provided to FADA when the Organization failed to collect any rent owed. This outstanding rent is also an undue benefit, but as mentioned previously, while we are moving forward with revocation, we are not pursuing the penalty for undue benefits.

While the land and facilities may generate a public benefit now, depending on how the City of Burnaby uses them, that is not the proper test for whether the Organization has charitable purposes. The public benefit must have been generated by the Organization itself, while the Organization owned the land and facilities, for it to qualify as a charitable purpose.

3. Failed to meet disbursement quota

As outlined in the AFL, the CRA is of the view that the Organization has not met its minimum disbursement requirements as contained in the definition of disbursement quota (DQ) in subsection 149.1(1) of the Act. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraphs 149.1(3)(b) and 168(1)(b) of the Act.

The Organization's representations:

The Organization stated that in its view it is not fair for the CRA to propose revocation for a cumulative shortfall that is relatively small at \$39,998. In addition, the Organization stated that if the unpaid debts from FADA and the Institute have no value, the Organization's assets for purposes of calculating the DQ should be adjusted.

CRA's findings:

Although the cumulative DQ short-fall in the audit period is relatively small it exists along with other areas of non-compliance identified in the Organization. Altogether, there is sufficient non-compliance to warrant revocation.

4. Failed to maintain adequate books and records

As outlined in the AFL, there were inconsistencies between the Organization's books and records, including its audited financial statements, and the 2015 and 2016 T3010s, Registered Charity Information Returns, filed. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(e) of the Act. In addition, the Minister may suspend the Organization's authority to issue official donation receipts for one year for having inadequate books and records under subsection 188.2(2)(a) of the Act.

The Organization's representations:

The Organization stated that the AFL did not specify what deficiencies were in its books and records, and even concedes that its audited financial statements were correct. In addition, the Organization stated that there is no reference for mistakes in filing T3010s as being grounds for revocation.

CRA's findings:

While we acknowledge the Organization's intention with filing its T3010 based on the trial balances was to ensure that the information return was filed on time, there is a requirement, separate from the deadline for filing, that the information in the T3010 be supported by the books and records of the Organization. Far from supporting the T3010s filed, the Organization's books and records, in the form of the audited financial statements, support different figures.

The discrepancies between the Organization's trial balance and final audited financial statements were significant, affected numerous line items, and in our view cannot be reasonably viewed as minor. The Federal Court of Appeal has confirmed that a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a T3010 are a sufficient basis for revocation.³

5. Failed to issue donation receipts in accordance with the Act and/or its Regulations

As outlined in the AFL, there were various errors and omissions noted in the Organization's official donation receipts (ODRs). For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(d) of the Act.

The Organization's representations:

The Organization accepted responsibility for the errors identified in its ODRs, but indicated that it does not think the appropriate response is revocation.

³ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51.

CRA's findings:

We understand that the ODR errors could be remedied as the Organization now acknowledges the errors made; however, they exist along with other areas of non-compliance identified in the Organization. Altogether, there is sufficient non-compliance to warrant revocation.

6. Failed to file an information return as and when required by the Act and/or its Regulations

As outlined in the AFL, the Organization's T3010s for its 2015 and 2016 fiscal year ends contained significant and material errors, and the Organization failed to file a Form T1240, Registered Charity Adjustment Request to account for the material differences. As such, the Organization was not compliant with its obligation to file an accurate information return as prescribed at subsection 149.1(14) of the Act. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(c) of the Act.

The Organization's representations:

In the Organization's view, the discrepancies between its T3010 and its audited financial statements occurred because it was extremely concerned to file the T3010 within 6 months of its fiscal year end. As a result, the Organization argued that it should not be penalized. The Organization also argued that the AFL did not cite the authority for revocation for failure to file a Form T1240.

CRA's findings:

While we acknowledge that the Organization's intention with filing its T3010 based on the trial balances was to ensure that the information return was filed on time, there is a requirement, separate from the deadline for filing, that the information in the T3010 be accurate.

The discrepancies between the trial balance and the final audited financial statements were significant, affected numerous line items, and in our view cannot be reasonably viewed as minor. The Federal Court of Appeal has confirmed that a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a T3010 are a sufficient basis for revocation.⁴

Conclusion

For the reasons explained above, and the reasons outlined in our letter of September 7, 2021, it is the CRA's position that the Organization 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.

⁴ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51

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.