

CANADA REVENUE
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DU CANADA

December 3, 2019

Entrepreneurs Foundation
1250-1500 W. Georgia St
Box 62
Vancouver, BC V6G 2Z67

BN: 84217 9509 RR0001
File #: 3047450

Dear [REDACTED]

Subject: Audit of Entrepreneurs Foundation

This letter results from the audit of the Entrepreneurs Foundation (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period from July 1, 2011 through June 30, 2016.

On December 3, 2019 the Foundation was advised that the CRA identified specific areas of non-compliance with the provisions of the *Income Tax Act* and its *Regulations* in the following areas.

| AREAS OF NON-COMPLIANCE | | |
|-------------------------|--|-----------------------|
| | Issue | Reference |
| 1. | Failure to Devote Resources to Charitable Activities – Gifting to Non-Qualified Donees | 149.1(4.1)(a) and (b) |
| 2. | Failure to Maintain Adequate Books and Records | 230(2), 168(1)(e) |
| 3. | Filing the Registered Charity Information Return as Prescribed | 149.1(14) |

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Foundation an opportunity to respond and present additional information. The Foundation must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

Background

The Foundation applied for charitable registration as a public foundation in November of 2011 with the following as its objects:

- a) 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*; and
- b) to undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

On its application form, the Foundation stated that a) above was a “standard purpose to cover activities required to administer finance and make donations to “qualified donees” as permitted by the Income Tax Act,” and b) was a “standard ancillary clause to cover any ancillary activities required to operate organization.”

CRA notified the Foundation on December 22, 2011 that it met the requirements for charitable registration under the *Income Tax Act* with an effective date of November 7, 2011. The Foundation was also informed that it was “registered on the understanding that it will restrict its activities to receiving and managing funds for the exclusive purpose of making gifts to qualified donees,” and “generally, qualified donees are other registered Canadian charities, registered Canadian amateur athletic associations and Canadian municipalities... Individuals and most organizations outside Canada, such as foreign charities and international aid agencies, are generally not qualified donees.”

Accompanying the Foundation’s application for registration was a cover letter signed by [REDACTED] of [REDACTED] requesting that she, [REDACTED] be recorded as authorized to receive information on the status of the file. After registration, [REDACTED] provided correspondence at the Foundation’s direction and [REDACTED] is listed as preparing all of the T3010 Registered Charity Information Returns submitted since registration.

Relationship to Entrepreneurs Organization

During the audit period, all of the Foundation’s funding was provided by another registered Canadian charity, the Thomas Foundation (Thomas). Mr. Peter Thomas has been the chair of the board of the directors of Thomas since registration. Audit research showed that Mr. Thomas is the Chairman Emeritus of Entrepreneurs Organization (EO), and has been involved with EO since its earliest days (per its website). EO is a US entity exempt from Income tax (commonly referred to as a “501(c)(3)” entity) that maintains its global headquarters in Alexandria, Virginia and maintains the following on its website:

- it is the world’s only peer-to-peer network exclusively for entrepreneurs;
- was founded to help leading business owners on their path to greater professional success and personal fulfilment; and
- it is a global community that enriches members’ lives through dynamic peer-to-peer learning, once-in-a-lifetime experiences and connections to experts.

When interviewed, Blair Asslay, Director, stated on more than one occasion, that the Foundation was formed to support a specific program of EO. The program is Entrepreneurs Organization

Global Student Entrepreneur Awards (EO GSEA), an awards program that EO holds globally every year.

██████████ Senior VP of Operations for EO, is one of only two signatories identified for the Foundation. ██████████ issued invoice ██████████ to Entrepreneurs Foundation on November 10, 2011, care of a US address and to the attention of ██████████ for services rendered with respect to 'Planning – New Public Foundation'. Subsequent invoices for service, issued by ██████████, were also sent to ██████████'s attention at the US address. Further, all correspondence in the Foundation's records are directed to ██████████, rather than one of the three directors– William Trimble, Blair Assaly, and John Radostits.

Activities

In the audit period, the Foundation made two material disbursements. The first, after receiving \$300,000 from Thomas dated March 9, 2012, a cheque was issued to Tides Canada Foundation (Tides) in the amount of \$285,000 in September of 2012. Correspondence accompanying the cheque to Tides directed the funds to Tides Foundation, a 501(c)(3) entity located in San Francisco, California, in favour of Entrepreneurs Organization (EO) in Alexandria, Virginia. Bank wire instructions to EO's bank account were also included with ██████████ listed as the contact for EO. A review of publicly available US tax filings by both the Tides Foundation and EO confirm the grant recommendation was carried out.

The second disbursement was in July of 2013 when, after receiving a further \$100,000 in March of 2013, from Thomas, the Foundation directly wired the same amount to EO. Documents supplied in the course of the audit showed that this wire transfer was made at the direction of ██████████

Identified Areas of Non-Compliance

1) Failure to Devote Resources to Charitable Activities – Gifting to Non-Qualified Donees

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits public foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(3)(b.1) provides that a public foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.¹

A "qualified donee" means a donee defined in subsection 149.1(1). Qualified donees are as follows:

¹ This provision is retroactive to December 20, 2002, and covers the period under audit. <http://www.fin.gc.ca/drleg-apl/nwmm-amvm-1012n-05-eng.asp>, see Clause 308.

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
- a listed Canadian municipality;
- a listed municipal or public body performing a function of government in Canada;
- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

As the Act specifically states what constitutes a qualified donee, applying the maxim "*expressio unius est exclusio alterius*" means that entities not expressly stated in this list are not considered qualified donees.

Audit Findings

As detailed above, the Foundation made two material disbursements. The Foundation received \$400,000 in the audit period, of which, \$385,000 was disbursed directly (July 2013) or indirectly (March 2012) to Entrepreneurs Organization. As noted in the CRA's letter notifying the Foundation of its charitable registration, generally organizations located outside of Canada are not qualified donees. This is true of EO; it does not meet the definition of a qualified donee as specified in subsection 149.1(1) of the Act.

Therefore, the second disbursement - \$100,000 in July of 2013 - was a gift to a non-qualified donee and in contravention of the Act. Further, although the gift to Tides was a gift to a qualified donee, the CRA considers the disbursement to Tides a situation whereby, the Foundation, has made a disbursement to a qualified donee with the sole intention that it be further disbursed to a non-qualified donee, via a transfer through Tides to the Tides International Development Fund.

As such, it is our position, that the Foundation's resources were not expended in furtherance of its stated purpose of making gifts to qualified donees; and the Foundation has failed to meet the requirements of paragraph 149.1(3)(b.1) of the Act. For this reason, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2) Failure to Maintain Adequate Books and Records

Subsection 230(2) of the Act provides that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister, containing:

- (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- (c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under the Act.

Put in more general terms, the books and records a charity keeps must allow the CRA to:

- Verify revenues, including charitable donations received;
- Verify that resources are spent on charitable programs; and
- Verify that the charity's purposes and activities continue to be charitable at law.

Keeping adequate books and records is essential to the financial administration of a charity and beneficial for donors. Adequate books and records allow the CRA to verify donations made to a charity and to ensure proper use of charitable resources.

The policy of the CRA relating to the maintenance of books and records and books of account is based on several judicial determinations, which have held that:

- It is the responsibility of the registered charity to prove that its charitable status should not be revoked²;
- A registered charity must maintain, and make available to the CRA *at the time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto³; and
- The failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status⁴.

Audit Findings

The audit determined that the Foundation's books and records did not adequately demonstrate that its Board actively managed the Foundation's activities as required by the Act. Specifically:

- No meeting minutes were maintained in the Foundation's corporate record book other than for a meeting when the current board was appointed shortly after incorporation, and another to continue under the new Not-for-Profit Corporations Act. Mr. Assaly, claimed there were "a few phone meetings," but no further records were provided;

² Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72, [2002] 3 F.C. D-18

³ Canadian Committee for the Tel Aviv Foundation v Canada, supra footnote 68; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, (2004) FCA 397

⁴ College Rabbinique de Montreal Oir Hachaim D'Tash v Canada (Minister of the Customs and Revenue Agency), (2004) FCA 101; Act subsection 168(1)

- Mr. Assaly was unable to provide information on who can sign on the Foundation's bank account – all banking appears to have been handled by [REDACTED] and it appears that [REDACTED] are the only signatories. It was asked if the Foundation had a written agreement directing [REDACTED] as to the maintenance of its records; Mr. Assaly did not know;
- Mr. Assaly was not aware that the Foundation had gifted funds to the Tides Canada Foundation; and
- Correspondence in the Foundation's records is between [REDACTED] of EO, rather than one of the three directors– William Trimble, Blair Assaly and John Radostits. In some instances, [REDACTED] provided direction on how to deposit funds, and provided further direction on how those funds were to be disbursed.

The books and records of an organization help to demonstrate the direction and control the board and management have over the organization's activities. The board minutes themselves are central to this as they assist in explaining the strategic direction of the organization and the ongoing development of the charitable program. The Foundation failed to maintain adequate books and records as required under section 230(2) in that it was not able to provide documentary support that its board of directors was actively engaged in the oversight of the Foundation's activities.

Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act dealing with books and records. It is our position that the present case consists of material non-compliance. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

3) Filing the Registered Charity Information Return (Information Return) As Prescribed

Subsection 149.1(14) of the Act states that:

Every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due

care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.⁵

Audit Findings

The Foundation improperly completed its Information Return for the fiscal period ending June 30, 2013. Specifically, form T1236, Qualified Donee Worksheet, contained the information for the \$100,000 transfer directly to EO. As discussed above, EO is not a qualified donee.

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

The Foundation's options:

a) Respond

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 45 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

b) Do not respond

The Organization may choose not to respond. In that case, the Director General of the Charities Directorate may issue a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

⁵ *Opportunities for the Disabled Foundation v MNR*, 2016 FCA 94 at paras 48-51.

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, please do not hesitate to contact me at (250) 363 0467 or, alternatively, my team leader, Sherri Davis, at (250) 363 3128.

Sincerely,

Dalyce Levesque, [REDACTED]
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