



August 31, 2021

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

BN: 83220-0463-RR0001-  
 File #: 3042838

Dear Leslie Brandlmayr:

**Subject: Audit of Timothy Foundation**

This letter results from the audit of the Timothy Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from November 1, 2013, to October 31, 2015.

On August 27, 2021, the Organization 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.	Spending requirements for gifts from non-arm's charities	149.1(4.1)(d), 168(1)(b)
2.	Failure to meet its disbursement quota (devotion of resources to charitable purposes)	149.1(1), 149.1(3)(b), 168(1)(b)
3.	Failure to devote resources to charitable activities - unrelated business	149.1(3)(a), 168(1)(b)
4.	Failure to maintain adequate books and records	149.1(3), 230(2), 230(4), 230(4.1) 168(1)(b), 168(1)(c)

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 Organization an opportunity to respond and present additional information and explain why its registered status should not be revoked. The Organization 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.

**Identified areas of non-compliance**

- 1. Spending requirements for gifts from non-arm's charities**

Paragraph 149.1(4.1)(d) of the Act states that the Minister may revoke the registration 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." Similarly, subsection 188.1(12) provides a penalty equal to 110% of the gift not made to an arm's length registered charity.

This means that if a registered charity receives a gift from another registered charity with which it does not deal at arm's length, it must expend, in addition to its disbursement quota (DQ), the fair market value of that gift prior to the end of the following taxation year. An additional requirement is that the expended amounts cannot be gifted to registered charities with which it does not deal at arm's length.

The term "not at arm's length" means persons acting in concert without separate interests or who are related. Related persons also include individuals or groups and the corporations in which they have a controlling interest. Persons related to these individuals or groups are also considered related to those corporations.

#### Audit findings:

The audit found that the Organization was inactive since its registration<sup>1</sup> until November 3, 2011 when it received a gift of a real property valued at \$18,477,925 from Theanon Charitable Foundation (Theanon). In our opinion that, at the time of the gift, Theanon and the Organization were not at arm's length with each other. The following paragraphs explain our position.

Blake Bromley was Director of Theanon when the gift was made to the Organization on November 3, 2011. He was also Director of the Organization until October 31, 2011, which was three days prior to the Organization receiving the gift from Theanon.

Furthermore, while Blake Bromley was not listed as Director of the Organization beyond October 31, 2011, documentary evidence shows that he continued to be one of the signing authorities on the Organization's bank account. His involvement in the Organization's operations were manifest in the fact that significant operating expenses such as property taxes, were paid by cheques signed by Blake Bromley. We also found that [REDACTED], Theanon Foundation, and the Organization were all located at the same address at [REDACTED].

In addition, the Organization's bylaws state that its members will appoint/remove/extend directors at the annual meeting of members. It is our belief that it is through such authority that Blake Bromley appointed [REDACTED] directors of the Organization. By so doing, Blake Bromley continued to exert control over the

<sup>1</sup> The Organization was registered as a public foundation effective December 11, 2009.

Organization, which he was the immediate past director. Similar control was exerted over Theanon. On April 30, 2013, Leslie Brandlmayr replaced Robert Kruse on Theanon's board of directors. This means that as of April 30, 2013 the majority (two-out of three) of the Directors of Theanon and all three of the Directors of the Organization were employees at [REDACTED]

It is also important to note that Blake Bromley was the controlling mind of Theanon whose charitable registration was revoked on February 10, 2018, as a result of an audit. Because both entities Theanon and the Organization were under the direction of the same controlling mind, it is our view that they were serving a common interest. In fact, Leslie Brandlmayr stated during the interview with the auditor that the Organization was "dedicated to overseeing the winding down of Theanon."

On the basis of the foregoing, it is our position that Theanon Charitable Foundation and the Organization maintained a non-arm's length relationship when the gift was made during the fiscal period ending October 31, 2012. As such, the Organization was required to expend the fair market value of the gift of \$18,477,925 before the end of the fiscal period ending October 31, 2013, in addition to the required DQ for that year. However, the audit revealed that the Organization did not expended the fair market value of the gift from Theanon before the end of the 2013 fiscal period. It expended, by way of gifts to other qualified donees, \$200,000 during the 2012 fiscal period (the year the gift was received), and none during the next fiscal period of 2013. The Organization also failed to meet its DQ requirements for its 2013 fiscal period. In fact, the Organization did not make any charitable expenditures for that particular fiscal period.

Consequently, it is our view that the Organization failed to meet the requirements set out at paragraph 149.1(4.1)(d) of the Act with respect to the gift received from another registered charity with which it does not deal at arm's length. Therefore, the Organization's registered status should be revoked in the manner described in paragraph 168(1)(b) of the Act.

Table 1: Director's List

<b>Fiscal period</b>	<b>Timothy Foundation</b>	<b>Theanon Charitable Foundation</b>
2011	<b>Blake Bromley</b> <b>Victoria Nalugwa</b> <b>Sheila Britton</b> Nate Lepp	<b>Blake Bromley</b> Christopher Richardson Robert Kruse
2012	<b>Sheila Britton</b> <b>Victoria Nalugwa</b> Nate Lepp	<b>Blake Bromley</b> Christopher Richardson Robert Kruse
2013	<b>Victoria Nalugwa</b> <b>Sheila Britton</b> Nate Lepp	<b>Blake Bromley</b> Christopher Richardson Robert Kruse

**Leslie  
Brandlmayr**

2014	<b>Victoria Nalugwa</b> <b>Sheila Britton</b> <b>Leslie</b> <b>Brandlmayr</b>	<b>Blake Bromley</b> Christopher Richardson Robert Kruse
2015	<b>Victoria Nalugwa</b> <b>Sheila Britton</b> <b>Leslie</b> <b>Brandlmayr</b>	<b>Blake Bromley</b> Christopher Richardson <b>Leslie Brandlmayr</b>

[Directors are per the T3010 filed. The names in bold are employees of ██████████  
██████████]

**2. Failure to meet its disbursement quota (devotion of resources to charitable purposes)**

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof.<sup>2</sup>

A registered charity may only use its resources (funds, personnel and/or property) in the two ways, both inside and outside of Canada: for charitable activities undertaken by the charity itself under its continued supervision, direction and control, and for gifting funds to "qualified donees" as defined in the Act.

Subsection 149.1(1) of the Act describes the disbursement quota, a minimum spending requirement of registered Canadian charitable organizations. The disbursement quota is calculated at a rate of 3.5% of a registered charity's property **not** used directly in charitable activities or administration. The disbursement quota is calculated based upon an average of the value of applicable property maintained during the 24 months before the beginning of the fiscal period and 24 months before the end of the fiscal period (i.e. amounts reported on Line 5900 and 5910 of Form T3010, Registered Charity Information Return)<sup>3</sup>.

Failure to meet the disbursement quota requirement can result in the revocation of a registered charity's charitable status as per paragraph 149.1(3)(b) of the Act in the manner described in section 168.

Audit Findings:

<sup>2</sup> Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue. [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

<sup>3</sup> See [Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation.html](http://Canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation.html)

The audit found that the Organization had a disbursement quota shortfall of \$330,736 for the fiscal period ending October 31, 2013, as illustrated in Table 2 below. Table 2 also shows a DQ shortfall \$309,836 for the 2014 fiscal period. However, this amount was reduced or absorbed by the DQ excess in the fiscal period ending October 31, 2015, by virtue of subsection 149.1(20) of the Act which allows the carry-back DQ excess to the immediate preceding year.

As explained above, the Organization did not meet the DQ requirements for its 2013 fiscal period. The disbursement quota requirements for registered charities are designed to ensure that the benefit of the tax assistance provided to such organizations and to their donors is passed on to those in need of assistance, through the charitable activities of such organizations.

It is, therefore, our view that the Organization failed to comply with the disbursement quota requirements outlined in subsection 149.1(1) of the Act in that the resources of the Organization have not been applied, expended or utilized in a manner shown to constitute a charitable use of its resources. Under subsection 149.1(3)(b) of the Act, the Minister may revoke the registration of the Organization, in the manner described in paragraph 168(1)(b) of the Act.

Table 2 Calculation of DQ

FPE	2012	2013	2014	2015
Line 5900		\$9,450,184	\$18,852,464	\$18,956,168
DQ requirement		\$330,756	\$659,836	\$663,466
Actual DQ <sup>4</sup>	\$200,000	0	\$350,000	\$4,439,000
DQ excess				\$3,465,698 <sup>5</sup>
DQ shortfall		\$330,756	\$309,836	

### 3. Failure to devote resources to charitable purpose - unrelated business

Under the Act, public foundations may carry on businesses, provided that these are related businesses.<sup>6</sup> A related business is one that is linked to a charity's purpose and is subordinate to that purpose. When a public foundation carries on a related business, it is considered to be devoting resources to its own charitable activities. The Act further defines related businesses as including those businesses that are not related to the charity's objects, but which have substantially all those employed in the business serving as unpaid volunteers.

Whether a particular activity of a charity is a business requires the facts and circumstances in each case to be considered in the light of certain criteria established by the courts:<sup>7</sup>

<sup>4</sup> Actual DQ = Line 5000 + Line 5050 (these lines are from Form T3010.)

<sup>5</sup> \$3,465,698 = \$4,439,000 - (\$663,466 + \$309,836)

<sup>6</sup> See paragraph 149.1(3)(a) of the Act.

<sup>7</sup> For more information, see our Policy Statement CPS-019: What is a Related Business.

- The intended course of action - If the rationale for operating a given activity is to generate a profit, then the activity is likely a business.
- The potential to show a profit - Even if an activity does not yield a profit, it may nonetheless be capable of earning a profit. In determining whether a particular activity is a business, it is the intention and capacity to make a profit at some point that are relevant. On the other hand, if the activity is structured so that it is incapable of returning a profit, then it is not a business.
- The existence of profits in past years - When the activity has been carried on for some time, a history of it returning a profit would generally imply that a business exists.
- The expertise and experience of the person or organization that undertakes the activity - If the person or organization that is undertaking the activity has been selected for the position because of his/her/its commercial knowledge, skill, or experience, it may indicate that the activity is commercial in nature and so may be a business.

"Carrying on" a business implies that the commercial activity is a continuous or regular operation. To determine if the business activity is subordinate to a charity's purpose, as opposed to becoming an unstated purpose in its own right, requires looking at the business activities in the context of the charity's operations as a whole.

We further note that the surrounding facts and circumstances, including the intention of the parties, the terms of agreements and the conduct of the parties must also be considered. Viscount Simon, in delivering the judgement of the House of Lords in *Commissioners of Inland Revenue v Wesleyan and General Assurance Society*,<sup>8</sup> stated at page 25:

"It may be well to repeat two propositions which are well established in the application of the law relating to Income Tax. First, the name given to a transaction by the parties concerned does not necessarily decide the nature of the transaction. To call a payment loan if it is really an annuity does not assist the taxpayer, any more than to call an item a capital payment would prevent it from being regarded as an income payment if that is its true nature. The question always is what is the real character of the payment, not what the parties call it."

#### Audit findings:

The audit found that the Organization were engaged in the business activity of managing and selling real property during the audit periods. It is our opinion that this activity was an unrelated business to the Organization's purposes.

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<sup>8</sup> *Commissioners of Inland Revenue v Wesleyan and General Assurance Society*, [1948] 30 TC 11.

Several factors support our position that it is a business, and an unrelated business. This real estate is the same property that in the hands of Theanon was determined to be an unrelated business and led to the revocation of its registration. The Director of the Organization Leslie Brandlmayr stated that "the Organization was dedicated to overseeing the winding down of Theanon." It engaged consultants to assist in the development and sale of these properties. These consultants included [REDACTED] of [REDACTED] also engaged by Theanon and Blake Bromley previously. In addition, Blake Bromley himself, [REDACTED] provided consulting services. In summary, many of the transactions that took place in Theanon that were found to be non-compliant had continued in the Organization.

Furthermore, we consider that the Organization and Theanon are not at arm's length with one another, as discussed in the preceding paragraphs. This supports our finding that the Organization continued to carry on the same activities as Theanon.

Factors present in the case of Theanon that led to the CRA's determination that it carried on an unrelated business, and that were also present in the case of the Organization included that the Organization was actively involved in obtaining a purchaser, rather than passively passing on the real property to a third party seller. In other words, the Organization did not hire a real estate agent, but rather chose to pursue finding a buyer for its real estate itself.

In addition, there is no connection between this real estate activity and the Organization's stated purposes of gifting to other qualified donees. While the profits from this activity may have been used by the Organization to fund its gifts, this by itself is not sufficient to connect it to the Organization's purposes.

In *Earth Fund/Fond Pour La Terre v Minister of National Revenue* [2002 FCA 498] the Court held that "I do not accept the argument of counsel for the appellant that the Alberta Institute case is authority for the proposition that any business is a "related business" of a charitable foundation if all of the profits of the business are dedicated to the foundation's charitable objects." The business activity must still be subordinate to the Organization's purposes. In this case, the real estate management activity was one of the two major activities of the Organization. Significant resources, both financial and human (personnel), were used in finding purchasers for the real estate. In the 2014 fiscal period, property taxes on this real estate accounted for 98% of all expenditures other than gifts to qualified donees. Similarly, property taxes accounted for 49% of the all expenditures other than gifts to qualified donees in the 2015 fiscal period. We note that in the 2015 fiscal period there were also significant expenses associated with attempting to sell this real estate. The Organization incurred \$84,337 in legal fees and \$27,451 in consulting and travel fees. Together, these selling expenses account for 49% of all expenditures other than gifts to qualified donees. Overall, in both 2014 and 2015 fiscal periods the Organization spent more than 90% of its financial resources (other than gifts to qualified donees) on this real estate management activity.

As such, it is our view that the Organization failed to devote its to a charitable activity by carrying on a [unrelated] business that did not further a charitable purpose. Therefore, As such, the registration of the Organization should be revoked in the manner described in section 168(1)(b).

#### 4. Failure to maintain adequate books and records

Section 230(2) of the Act requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by section 230(2), section 230(4) provides that:

- “every person required by this section to keep books of account, who does so electronically, shall retain in an electronically readable format:
- the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as prescribed; and
- all other records and books of account referred to in this section together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books relate.”

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:

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>9</sup>
- ii. 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 thereto;<sup>10</sup> and
- iii. 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 status in the case of material or repeated non-compliance.<sup>11</sup>

The audit revealed the following non-compliance issues:

1. The Organization accepted three software licenses from Glen Lamond Foundation on May 7, 2014, for which insufficient documentation to support the

<sup>9</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 26-27

<sup>10</sup> Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 30,40; The Lord’s Evangelical Church of Deliverance and Prayer of Toronto v Canada, 2004 FCA 397

<sup>11</sup> See Prescient Foundation v MNR, 2013 FCA 120 at para 51



value of \$200,000 for each, was provided. The software licenses held by the Organization were not submitted to an expert for a determination of their value. While such an appraisal is not required, it is highly recommended for assets valued over \$1,000 and the software licenses were recorded at \$200,000 each. Due to the value of these licenses reported, formal documentations to support the value at which they are recorded should have been kept.

2. The Organization's assets were not appropriately evaluated for impairment due to lack of collectability. The Organization recorded two promissory notes from Sanctum Foundation on which no payments were received during the audit period. There were no documents to support the collectability of the promissory notes. The Organization neglected to ensure that its assets are evaluated annually for impairment and written down as necessary if they become uncollectable. While we cannot be certain that these promissory notes were impaired, the Organization has no documentation to indicate otherwise.
3. The Organization did not have sufficient documentation about the significant decisions made by the Organization, such as accepting an offer for its real estate. While the decision itself was recorded in the minutes of the meeting of the directors, the rationale for why the offer was accepted was not documented.

The Organization did not provide adequate documentary evidence to support certain asset amounts it reported for the period under audit, nor did it maintain documentation in support of its decision. As such, it is our position the Organization has failed to demonstrate that it maintains adequate books and records as required.

Consequently, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act for failing to comply with or contravening subsection 230(2) of the Act dealing with books and records.

**The Organization's options:**

**a) Respond**

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above within 30 days from the date of this letter to the address below. After considering the response, we 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.

PROTECTED B

- 10 -

**b) Do not respond**

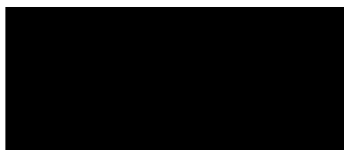
The Organization may choose not to respond. In that case, we may issue a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization with the party's name, contact information, and clearly specify the appropriate access granted to the party to discuss the file with us. For more information on how to authorize a representative, go on our website at

<https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.html>.

If you have any questions or require further information or clarification, do not hesitate to contact me at the one of the numbers below. My team leader, Crystal Scott, may also be reached at 250-857-2222.

Yours sincerely,



Maria Popova  
Audit Division  
Vancouver Island and Tax Services Office  
Telephone: 778-835-3255  
Toll Free: 1-855-522-7864  
Facsimile: 250-363-3000  
Address: c/o 9755 King George Boulevard  
Surrey, BC V3T 5E1