



Your file    Votre référence

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**REGISTERED**  
**Ms. MARIE L. PETERS**  
**PRESIDENT**  
**A.B.L.E. ASSOCIATION FOR THE BETTERMENT**  
**OF LITERACY AND EDUCATION**  
**BOX 3065 MAIN POST OFFICE**  
**VANCOUVER BC V6B 3X6**

**# 95936**

June 19, 1997

Dear Ms. Peters:

**Subject: Charity Tax Audit**

This letter is further to an audit of the books and records of account of A.B.L.E. ASSOCIATION FOR THE BETTERMENT OF LITERACY AND EDUCATION (the "Charity") which was conducted by a representative of the Department. The audit related to the operations of the Charity for its fiscal period ended March 31, 1994. We are also using the results of a review of the T3010 Information Returns filed by the Charity for the fiscal periods ended March 31, 1995 and 1996.

The audit and review have raised serious concerns about the Charity's compliance with certain provisions of the *Income Tax Act* (the "Act"); full compliance with these provisions is necessary for continued registered status. If these provisions are not complied with by a particular registered charity, the Minister of National Revenue (the "Minister") may revoke its registration in the manner described in section 168 of the Act.

The following will explain in which respects the Department considers that the Charity has contravened the provisions of the Act applicable to its registration as a charity.

### **A) Official Donation Receipts**

For a gift to be deductible for the purposes of sections 110.1 and 118.1 of the Act, a contribution must be made without conditions, from detached and disinterested generosity, out of affection, respect, charity or like impulses, and not from the constraining force of any moral or legal duty or from the incentive of anticipated economic benefits. A gift is made in any circumstances where all three of the following conditions are satisfied:

- 1) some property -- usually cash -- is transferred by a donor to a registered charity for its use in a charitable purpose or activity;
- 2) the transfer must be voluntary; and
- 3) the transfer is made without expectation of return.

Thus, a gift involves transferring ownership of property and ownership encompasses rights to use and enjoy property, including the right to transmit it to others. Ordinarily, a gift is not considered to have been made until the donee has received delivery of the gift and accepted it in a completed and irreversible transaction.

Under the Charitable Donation Program involving the Publishers Philanthropic Fund (PPF), the contributors paid an amount to the Charity and signed various documents the effect of which was to authorise the PPF to "gift" an additional amount that was purportedly used to contribute to the Charity. The contributors never received the PPF "gift" portion, as this portion was purportedly contributed directly to the Charity by PPF and PPF was not performing a mandate or procuration for the contributors. Then the Charity issued an official donation receipt to the contributors for an amount that included the PPF "gift" portion.

Therefore, under the Charitable Donation Program, the payments made by the contributors are not separate from and not unrelated to the "gift" made by PPF. Although this arrangement included two transactions occurring at an interval, the second transaction is an integral part of the overall exchange for which the contributors received consideration.

Thus, where the contributors' payments are a condition of a "gift" from a third party and where a benefit reverts to the contributors, then the payments are not considered as gifts at law.

Also, under the Funded Charitable Donation Program involving Sevat Limited, the contributors purportedly borrowed 100% of the amount of the purported donations from Sevat Limited with pledge forms to the Charity. The contributors were required to pay an amount equal to 25% of the borrowed funds for the purpose of purchasing life insurance policies. The cash surrender value of these policies would purportedly be worth the amount necessary to pay off the loans and related interest owing. The Charity then issued official donation receipts to the contributors for the same amount of the purported loans from Sevat Limited.

The contributions received under both fund-raising plans do not qualify as gifts and, therefore, are not eligible for an income tax credit or a deduction from income under the respective section 118.1 or 110.1 of the Act.

Regulation 3501(1)(g) of the Act provides that "every official donation receipt shall contain the name and address of the donor, including the first name and initial where the donor is an individual." According to our review, under the Charitable Donation Program, the Charity did not exercise its responsibility to ascertain that the name placed on the official donation receipt was the name of the actual donor.

Regulation 3501(1)(h) of the Act stipulates that "every official donation receipt shall contain the amount that is the amount of the cash donation, or where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time at which the donation was made." Our review revealed that, under the Funded Charitable Donation Program, the Charity issued an official donation receipt for an amount other than the actual amount of the donation.

Pursuant to paragraph 168(1)(b) of the Act, the Minister may give notice to a registered charity that he proposes to revoke its registration where it ceases to comply with the requirements of the Act for its registration as such.

Pursuant to paragraph 168(1)(d) of the Act, the Minister may give notice to a registered charity that he proposes to revoke its registration where it issues an official donation receipt otherwise than in accordance with the Act and the regulations.

#### **B) Books and Records**

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records of account. The purpose of this requirement is to enable the Charity to accurately provide Revenue Canada with the information required by the Act as well as to enable Revenue Canada to verify the accuracy of reported information through the conducting of audits of the official donation receipts issued, income received and expenses made.

During the audit for its fiscal period ended March 31, 1994, it was noted that the Charity's books relating to its financial transactions contained various errors that caused incorrect amounts to be reported to the Minister. The general ledger, trial balance, running account balances with suppliers and financial statements were not written up or made available to us. Inventory of goods for sale was incorrectly accounted for and incorrectly valued. In addition, the auditor was unable to vouch the charitable disbursements and, consequently, we cannot confirm that the Charity is meeting its annual disbursement quota.

The Charity is not meeting its requirement to maintain adequate books and records when it fails to exercise due care with respect to ensuring the accuracy thereof.

Pursuant to paragraph 168(1)(e) of the Act, the Minister may give notice to a registered charity that he proposes to revoke its registration where it fails to maintain adequate books and records as required under the Act or a regulation.

### C) Information Returns

Per subsection 149.1(14) of the Act, the prescribed *Registered Charity Information Return (T3010)* should be filed with the Minister within 6 months from the end of each taxation year.

Considering review evidence, the returns for 1994, 1995 and 1996 were not filed on time.

Pursuant to paragraph 168(1)(c) of the Act, the Minister may give notice to a registered charity that he proposes to revoke its registration where it fails to file an information return as and when required under the Act or a regulation.

### Conclusion

The consequences to a registered charity of losing its registration include:

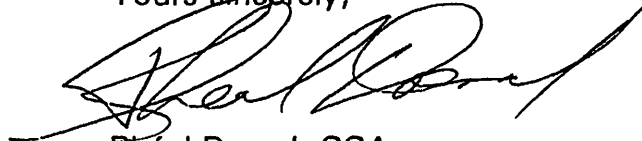
1. the loss of its tax exempt status as a registered charity which means that the Charity would become a taxable entity under Part I of the Act unless, in the opinion of the Director of the applicable tax services office, it qualifies as a non-profit organization as described in paragraph 149(1)(l) of the Act;
2. loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the Charity would not be allowable as a tax credit to individual donors as provided at subsection 118.1(3) of the Act or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the Act; and
3. the possibility of a tax payable under Part V, subsection 188(1) of the Act.

For your reference, we have attached a copy of IT-110R2 - *Deductible Gifts and Official Donation Receipts* - and of the relevant provisions of the Act concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present reasons why the Minister of National Revenue should not revoke the registration of the Charity in accordance with subsection 168(2) of the Act, you are invited to submit your representations within 30 days from the date of this letter. Subsequent to this date, the Director of Charities will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the Charity in the manner described in subsection 168(1) of the Act.

Should you have any questions on these matters, please telephone Raymond Séguin at [REDACTED] or myself at [REDACTED], or write to 5004B - 400 Cumberland Street, Ottawa, Ontario, K1A 0L5.

Yours sincerely,



Rhéal Dorval, CGA  
Assistant Director  
Audit Section  
Charities Division

Enclosures

File

**REGISTERED MAIL**

Your file    Votre référence

**MR. STUART MCPHERSON  
PRESIDENT  
A.B.L.E. ASSOCIATION FOR THE BETTERMENT  
OF LITERACY AND EDUCATION  
303 - 1080 HOWE STREET  
VANCOUVER BC V6Z 2T1**

Our file    Notre référence

**REG.# 0959361  
BN 891826646RR0001**

JUL 23 1998

Dear Mr. Mcpherson:

**Subject: Notice of intent to revoke**

This letter is further to a letter dated August 14, 1997 received from J. Christopher Meyer on your behalf. In his letter, Mr. Meyer replies to the Department's letter of June 19, 1997 in which you were invited to submit representations to us within 30 days as to why the Minister of National Revenue should not revoke the registration of A.B.L.E. ASSOCIATION FOR THE BETTERMENT OF LITERACY AND EDUCATION (the "Charity") in accordance with subsection 168(2) of the *Income Tax Act* (the "Act").

Attached please find a copy of the Department's June 19, 1997 letter outlining the reasons why we have determined that the Charity issued receipts for gifts or donations otherwise than in accordance with the *Act* and its regulations and that contain false information, and that it failed to comply with or contravened subsection 230(2).

We reviewed your reply carefully but failed to see an argument to challenge our understanding that the Charity is issuing receipts to alleged donors for amounts that are substantially higher than the donors' actual payment. The inflated value of the receipt is not only contrary to the requirement of the law.

It constitutes a substantial consideration back to the donor which vitiates any payment as a valid gift.

The practice, within the Charitable Donation Program involving the Publishers Philanthropic Fund, of conferring benefits of value to the donor in recognition of his/her contribution, was a regular occurrence. Moreover, the benefit given in recognition can be said to have been material in the donor's decision to give. At law, the contribution was made with the expectation of a return and therefore was not a gift for tax purposes.

Beforehand, while the Charity operated the Funded Charitable Donation Program, the Financial Institutions Commission's order to the Charity and others to cease from either directly or indirectly carrying on insurance business reveals that the program was part of commercial transactions or contracts of sale of insurance policies. The transactions create or imply an obligation on the part of the donors to make the contribution payments and to take advantage of material benefits by the transferors by way of return.

Under both programs the Charity erred in issuing donation tax receipts that did not contain the name of the true donor and/or the actual amount of the donation.

Mr. Meyer's reply only offered corrective actions to address the non-conformities regarding the books and records and the information returns mentioned in our letter of June 19, 1997. We therefore conclude that our assessment of improper receipting practices by the Charity was essentially accurate.

Therefore, I wish to advise that pursuant to the authority granted to the Minister in subsections 149.1(3) and 168(1) of the *Act* and delegated to me in subsection 900(8) of the Regulations to the *Act*, I propose to revoke the registration of A.B.L.E. ASSOCIATION FOR THE BETTERMENT OF LITERACY AND EDUCATION. By virtue of subsection 168(2) of the *Act*, the revocation will be effective on the date of publication in the Canada Gazette of the following notice:



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

**Registration number:** 0959361-21

**Business number:** 891826646RR0001

**Name:** A.B.L.E. ASSOCIATION FOR THE BETTERMENT OF  
LITERACY AND EDUCATION  
Vancouver, British Columbia

Should you wish to appeal this notice of intention to revoke the charity registration in accordance with subsections 172(3) and 180(1) of the *Act*, you are advised to file a Notice of Appeal with the Federal Court of Appeal within 30 days from the mailing of this letter. The address of the Federal Court of Appeal is:

Supreme Court Building  
Wellington Street  
Ottawa, Ontario  
K1A 0H9

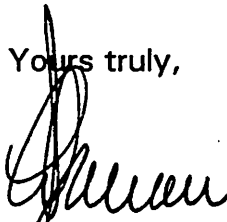
Please note that the Federal Court Rules impose particular obligations upon the organization filing an appeal - the appellant - to be met within restricted time frames. In particular, the appellant is responsible for filling the documents that will form the case material for the Court's review. You can obtain information about these Rules from the Court.

As of the date of revocation of the registration of the organization, which is the date upon which the above-noted notice is published in the Canada Gazette, 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.

Additionally, the organization may be subject to tax exigible pursuant to Part V, section 188 of the *Act*. For your reference, I have attached a copy of the relevant provisions of the *Income Tax Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

I wish to advise you that pursuant to subsection 150(1) of the *Act* a return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) shall without notice or demand therefor, be filed with the Minister in prescribed form containing prescribed information. Also we draw your attention to paragraph 149(1)(l) of the *Act* which states the definition of a non-profit organization and subsection 149(12) which states the filing requirements of a non-profit organization.

Yours truly,



for  
Neil Barclay  
Director  
Charities Division

Attachments

c.c. J. Christopher Meyer