



REGISTERED MAIL

MAR 24 2004

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Canadian Friends of
Yeshiva Ohel Shimon of Erlau
283 McLeod Street
Ottawa, ON K2P 1A1

BN 88928 1648 RR 0001
File No. 0446526

**Subject: Notice of Intention to Revoke Registration of
Canadian Friends of Yeshiva Ohel Shimon of Erlau**

Dear Sir:

I am writing to you further to Canada Customs and Revenue Agency's audit of Canadian Friends of Yeshiva Ohel Shimon of Erlau, hereinafter referred to as the "Charity," conducted by a representative of the Canada Customs and Revenue Agency (the "CCRA"). The audit related to the operations of the Charity for its fiscal period ended March 31, 1999.

CCRA acknowledges receipt of your letter dated September 2, 2003, in reply to CCRA's letter of April 7, 2003, concerning the audit results of the Charity. After careful consideration of your letter, CCRA has determined that you have not presented adequate reasons why the Minister of National Revenue (the "Minister") should not revoke the registration of the Charity.

The Charity has failed to provide corrective measures addressing the issues of non-compliance with respect to the *Income Tax Act* (the "Act") and the Income Tax Regulations (the "regulations") mentioned in CCRA's letter. Therefore, CCRA has determined that there are sufficient grounds to revoke the Charity's registration in accordance with subsection 168(1) of the *Act*. The specific areas of concern are official donation receipts, records and books, funds sent overseas, and devotion of resources to a non-qualified donee.

Official Receipts

Finding:

Part XXXV of the regulations stipulates various legislative requirements pertaining to official donation receipts issued by registered charities. The official receipts issued by the Charity failed to comply with the requirements of subsection 3501(1) of the regulations as follows:

Official Receipts (cont'd)

Finding: (cont'd)

- Official receipts did not contain a statement, "official receipt for income tax purposes."
- Official receipts did not show the address of the donor.

These non-compliance issues were also identified and brought to the Charity's attention in the two previous audits conducted by CCRA for the fiscal periods ended March 31, 1992 and 1995.

As a result, the Charity failed to comply with subsection 3501(1) of the regulations in that official receipts issued by the Charity did not show the required contents. Under paragraph 168(1)(d) of the *Act*, the Minister may, by registered mail, give notice to the Charity that the Minister proposes to revoke its registration because the Charity issues receipts for a gift or donation otherwise than in accordance with the *Act* and the regulations.

Records and Books

Finding:

Contrary to paragraph 230(2)(b) of the *Act*, the Charity failed to keep records and books of account containing a duplicate of each receipt containing prescribed information for a donation received by it.

Under paragraph 168(1)(e) of the *Act*, the Minister may, by registered mail, give notice to the Charity that the Minister proposes to revoke its registration because the Charity fails to comply with or contravenes any of sections 230 to 231.5 of the *Act*.

Funds Sent Overseas

Finding:

Pursuant to subsection 149.1(1) of the *Act*, the Charity must devote all its resources to charitable activities carried on by the Charity itself. While the Charity may carry on its charitable activities through an agent, the Charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities. The requirements under the Agency Agreement are simply a means of ensuring compliance with the *Act*. Several major deficiencies related to the funds sent overseas by the Charity were identified, namely:

Funds Sent Overseas (cont'd)

***Finding:* (cont'd)**

- the Charity violated clauses of the Agency Agreement in that it maintained little control over the funds disbursed to and by its agent;
- the Charity was unable to demonstrate adherence to a system of continuous and comprehensive reporting as required by the Agency Agreement;
- the Charity's funds did not remain apart from those of its representative, and the Charity's role in any project or endeavour was not separately identifiable as its own charitable activity;
- the agent did not demonstrate that it maintained detailed records of all amounts received from or for the account of the Charity and all expenditures incurred on behalf of the Charity in accordance with the Agency Agreement;
- the separate bank account kept by the agent appeared to be a transfer account, that is, money was not paid directly to suppliers, but was sent to the agent for disbursement such that the Charity did not exercise direction and control over the agent's expenditures;
- the agent failed to provide unaudited quarterly statements and annual reports;
- the Charity's statement that its agent kept it currently and fully informed of its activities, pursuant to the Agency Agreement, was not supported by any documentary evidence; and
- the Charity failed to demonstrate that it authorized the projects and the amounts for the projects for which it claimed to have provided funds, contrary to the Agency Agreement.

In this case, as well as the two previous audits of the Charity conducted by CCRA for the fiscal periods ended March 31, 1992 and 1995, the Charity could not demonstrate, through documentary evidence, that it exercised a sufficient degree of control over the use of its funds by its agent, and the Charity did not keep proper books and records of activities carried on by its agent.

Funds Sent Overseas (cont'd)

Finding: (cont'd)

Under paragraph 168(1)(e) of the *Act*, the Minister may, by registered mail, give notice to the Charity that the Minister proposes to revoke its registration because the Charity fails to comply with or contravenes any of sections 230 to 231.5 of the *Act*.

Devotion of Resources to a Non-Qualified Donee

Finding:

As a result of the Charity's lack of control and accountability over the use of its funds by its agent, the Charity's transfer of funds to its agent constituted a gift to a donee that is not a qualified donee.

The Minister may, in the manner described in section 168 of the *Act*, revoke the registration of the Charity where the Charity makes a disbursement by way of a gift, other than a gift made to a donee that is a qualified donee at the time of the gift.

Conclusion

You are advised that for each of the reasons outlined above and pursuant to the authority granted to the Minister in subsection 168(1) of the *Act* and delegated to me, I propose to revoke the registration of Canadian Friends of Yeshiva Ohel Shimon of Erlau. 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), 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.

Business Number

Name

88928 1648 RR 0001

Canadian Friends of
Yeshiva Ohel Shimon of Erlau
Toronto, Ontario

Conclusion (cont'd)

Should you wish to appeal this Notice of Intention to Revoke Registration in accordance with subsections 172(3) and 180(1) of the *Act*, you must 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 specific obligations upon an appellant to be met within restricted time frames. In particular, the appellant is responsible for filing the documents that will form the case material for the Court's review. You may obtain information about these rules from the Court.

Consequences of Revocation

As of the date of revocation of the registration of Canadian Friends of Yeshiva Ohel Shimon of Erlau, which is the date upon which the above-noted notice is published in the *Canada Gazette*, Canadian Friends of Yeshiva Ohel Shimon of Erlau 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, Canadian Friends of Yeshiva Ohel Shimon of Erlau may be subject to tax exigible pursuant to Part V, section 188 of the *Act*. For your reference, enclosed, as the appendix is a copy of the relevant provisions of the *Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

By virtue of subsection 188(1) of the *Act*, Canadian Friends of Yeshiva Ohel Shimon of Erlau will be required to pay a tax within one year after the effective date of revocation. This revocation tax is calculated using prescribed form T2046 "*Tax Return Where Registration of a Charity is Revoked.*" The return must be filed and the tax paid on or before the day that is one year after the effective date of revocation. A copy of form T2046 is enclosed for your reference.

Consequences of Revocation (cont'd)

The amount of revocation tax payable will be equal to the total fair market value of Canadian Friends of Yeshiva Ohel Shimon of Erlau's assets on valuation day plus the amount of receipted donations and gifts from other charities received by the Charity after that day. Valuation day is 120 days before the date of mailing of this Notice of Intention to Revoke Registration. The amount of tax payable will then be reduced by the value of any assets or funds that the Charity transferred to qualified donees, disbursed on its own charitable activities, used to repay its debts, and used to cover reasonable expenses in the period from the valuation day to one year from the date on which the revocation is effective.

I also advise you that organizations that lose their registered charitable status may be subject to the requirements of section 150 of the *Act* for filing returns of income. Accordingly, a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer.

However, Canadian Friends of Yeshiva Ohel Shimon of Erlau may be eligible for non-profit organization status which is defined in paragraph 149(1)(l) of the *Act*. Subsection 149(12) of the *Act* states the filing requirements for a non-profit organization. Determination of an organization's status as a non-profit organization is the responsibility of CCRA's Tax Services Office. I emphasize that such recognition does not convey the authority to issue official donation receipts for income tax purposes.

If you need further information with regard to non-profit status, contact your local Tax Services Office.

Yours sincerely,



Maureen Kidd
Director General
Charities Directorate

Enclosures