



Government
of Canada

Gouvernement
du Canada

Taxpayers' Ombudsman

Ombudsman des contribuables

November 5, 2010
Case Number: 10/11-12931

Leslie Brandlmayr
Prescient Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver, BC, V6G 2Z6

Dear Mr. Brandlmayr:

Thank you for your complaint received on August 18, 2010, in which you identified concerns regarding the correspondence, information, and service the Prescient Foundation has received from the Canada Revenue Agency (CRA). This letter is in response to the complaint you have submitted to our office. We apologize for this delayed response.

The Taxpayers' Ombudsman can only review complaints that are related to service provided by the CRA. A service related complaint includes mistakes, which could refer to misunderstandings, omissions, or oversights; undue delays; poor or misleading information; and staff behaviour. The Taxpayers' Ombudsman is not mandated to examine any complaints relating to tax policy or program legislation, as there are already well-defined mechanisms for dealing with these issues. Since the majority of the issues raised within your complaint relate to the application of tax policy and legislation, it is beyond our mandate to address these complaints.

Further, we have reviewed your concerns regarding the information or lack of information provided to you by the CRA. The allegations that proper information was not provided to you cannot be addressed by this office as the questions are of a very technical nature, on which we cannot comment as we have no basis to demonstrate the alleged lack of information.

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Tel. – Tél. : 1-866-586-3839
Fax – Télécopieur : 1-866-586-3855

724-50 O'Connor Street
Ottawa ON K1P 6L2
www.taxpayersrights.gc.ca

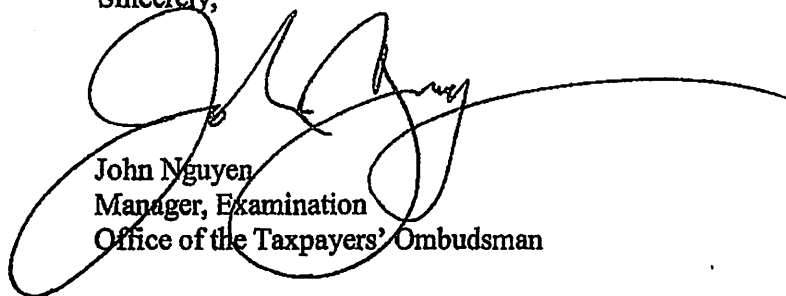
50, rue O'Connor, place 724
Ottawa ON K1P 6L2
www.droitsdescontribuables.gc.ca

Canada

We recommend that you contact Ms. Cathy Hawara, Director General of the CRA's Charities Directorate as suggested in the CRA's letter of July, 22, 2010.

Thank you for providing our office with the opportunity to assist you; however, no further action will be taken by our office.

Sincerely,



John Nguyen
Manager, Examination
Office of the Taxpayers' Ombudsman



REGISTERED MAIL

Prescient Foundation
Suite 1555— 1500 West Georgia Street
Vancouver BC V6G 2Z6

DEC 23 2010

BN: 855802708 RR0001
File #: 3026623

Attention: Blake Bromley

**Subject: Notice of Intention to Revoke
Prescient Foundation**

Dear Mr. Bromley:

I am writing further to our letters dated January 21, 2009, March 18, 2010 and May 10, 2010 (copies enclosed), in which you were invited to submit representations as to why the registration of Prescient Foundation (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written responses dated February 18, 2009, July 16, 2009, April 9, 2010, August 13, 2010, and your comments during your conversation with the Director of Compliance of the Charities Directorate on August 31, 2010. However, notwithstanding your representations, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position on these matters is summarized in Appendix A attached.

Conclusion:

The Canada Revenue Agency (CRA) audit has revealed that the Prescient Foundation (the Organization) was not complying with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization has failed to demonstrate that it operates exclusively for its own charitable purposes and that it maintains adequate books and records.

Consequently, for the reasons mentioned herein, and as further explained in our letters dated January 21, 2009, and March 18, 2010, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor
Ottawa ON K1A 0L5

Notice is hereby given, pursuant to paragraphs 168(1)(b) 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
855802708RR0001

Name
Prescient Foundation
Vancouver BC

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes 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

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

Consequences of Revocation

As of the effective date of revocation:

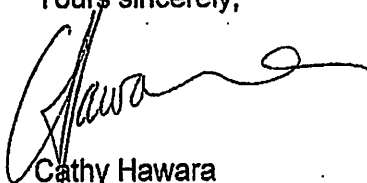
- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as deductions to corporate donors under subsection 118.1(3), or 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 prescribed form T-2046 "*Tax Return Where Registration of a Charity is Revoked*" (the Return). The Return 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. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be

found in Appendix "C" attached. Form T-2046, and the related Guide RC-4424, "Completing the Tax Return Where Registration of a Charity is Revoked", are available on our website at www.cra-arc.gc.ca/charities;

- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (the ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, I wish to 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 prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letters dated January 21, 2009, March 18, 2010, May 10, 2010
- Representation letters dated February 18, 2009, July 16, 2009, April 9, 2010, August 13, 2010
- Appendix "A" Our Position
- Appendix "B", Relevant provisions of the Act

Failure to Operate for and Devote its Resources to Charitable Purposes:

Transactions involving 570129 B.C. Ltd. / Vision Poultry Ltd.

Our letters of January 21, 2009, and March 18, 2010, detailed a series of transactions¹ through which the Prescient Foundation (Organization) and two other charities had purchased the shares of 570129 BC Ltd. ("570129"). Despite your submissions on this issue, it remains our position that the transactions were not undertaken to fulfill the Organization's mandate of disbursing funds to qualified donees but to confer substantial benefits on private individuals.

In your representations, you explained that the Organization (along with two other charities) purchased the shares of 570129 to "cause" the latter to make a significant gift (farm assets) to Theanon². In your view, this is sufficient to demonstrate that the Organization operated for the purpose of "disbursing funds to qualified donees". As previously explained, we disagree with this characterization.

First, we cannot agree that a gift of assets from a separate corporation to a qualified donee constitutes a disbursement of funds by the Organization itself, even where the shares of that corporation are owned by the Organization. The disbursement is that of the corporation.

Second, whether it was the Organization or 570129 that caused the transfer of farm assets to Theanon, it is our position that the transfer did not represent a *bona fide* gift. As detailed previously³, Theanon made various cash transfers to the Organization and two other charities that purchased the shares of 570129 just days before 570129 purportedly gifted its assets to Theanon. The proximity of the dates and nearly-identical values⁴ of the cash transfers by Theanon and the purported gift of farm assets to Theanon indicated the transactions were circular in nature. Even if we accepted your assertion that the Organization had caused farm assets to be transferred to Theanon, the transactions could only be characterized as an exchange of properties rather than a gift.

It is therefore our conclusion that the Organization did not make a gift nor caused a gift to be made to a qualified donee. As described in our previous letters, we do not agree that the primary purpose of these transactions was to enrich the

¹ See Appendix A to our letter of March 18, 2010.

² You raised this argument in your letter dated February 18, 2009, your Service-Related Complaint dated June 25, 2010, and your conversation with our Director of Compliance on August 31, 2010.

³ See footnote 1.

⁴ Theanon paid \$1,900,000 in cash to the Organization and the other two charities on February 25, 2005. 570129 transferred farm assets to Theanon from 570129 valued at \$2,020,000 (\$3,460,000 net of \$1,440,000 in outstanding debt) on March 1, 2005. A further cash payment of \$54,000 was paid to the Organization by Theanon on June 24, 2005.

charities involved. Rather, it is our position that the intent of these transactions was simply to facilitate the sale of farm assets⁵ by 570129 to an outside purchaser while avoiding taxes otherwise payable by the sellers. As previously indicated⁶, an agreement was already in place to sell the farm assets to an outside purchaser before the share transaction took place. If 570129 sold the assets directly to the outside purchaser, the sale would have been subject to a capital gains tax. Dividend taxes would also be applicable when the sales proceeds are withdrawn from 570129 by the Dekkers. By purportedly gifting the farm assets to Theanon before the eventual sale, 570129 was able to offset the capital gains tax otherwise payable with the tax receipt issued by Theanon. Furthermore, the net proceeds of sales purportedly received by Theanon approximately offset the cash payments it made to the Organization (and two other charities) five days prior. Effectively, the Organization's (and the two other charities') purchase of the shares of 570129 represented a routing of the proceeds from the sale of farm assets to the Dekkers on a tax-free basis⁷.

It is our conclusion that the Organization primarily operated for non-charitable purposes during the period under review. The Organization purportedly received a gift of \$574,500 which it should have devoted to charitable activity or genuine disbursement to qualified donees. Instead, these funds were used to purchase shares from private parties that (1) were to become valueless when the underlying property was transferred out of the corporation and (2) the underlying property of which was already sold to a third party. It is our position that the Organization purchased these shares in order to allow private parties to receive funds on a tax-free basis. We note that in the fiscal period ending November 30, 2005, this represents substantially all of the Organization's financial activity.

In your conversation with our Director of Compliance on August 31, 2010, you contended that the Organization "came out with more money". *Per* our previous letters, we cannot accept that the fact that the small fee paid to Prescient justifies the use of \$574,500 of the Organization's resources to purchase and write-down shares.

Therefore, and as described in our previous letters, it remains the CRA's position that the Organization has failed to operate exclusively for charitable purposes as required by the Act, but has operated collaterally, if not primarily, to promote a tax planning arrangement for the benefit of private individuals. In our view, this reason alone is sufficient in and of itself to warrant the revocation of the Organization's status.

⁵ Including real estate, 30,050 BC egg hatching quota and equipment. See Footnote 1.

⁶ See footnote 1.

⁷ The Dekkers were able to offset the capital gains tax on the sale of the 570129 shares with the capital gain exemption on farm property.

Finally, you requested that CRA await the decision of the Tax Court of Canada ("TCC") on the Dekkers before concluding the audit. As you are aware, the Charities Directorate is responsible for auditing registered charities and determining their compliance with the Act. In general, the factors behind the reassessment of a taxpayer and the compliance issues of a registered charity would be different. In our view, the potential decision of the TCC relating to the tax liability of the taxpayer is unlikely to alter the view of the CRA as to whether the Organization operated in compliance with the Act. As such, we are not willing to hold this matter in abeyance.

Gifts to Non-Qualified Donees

1. Transfer of \$574,500 to the Dekkers:

Our letter of March 18, 2010 explained that we considered the \$574,500 paid to the Dekkers to be a gift to a non-qualified donee. You disputed this position in your letter of April 9, 2010, explaining that the 570129 shares became valueless only because the Organization caused 570129 to make a gift to Theanon. As we have detailed above, we do not accept the position that the transfer of property from 570129 constitutes a gift or disbursement from Prescient. As above, it was apparent from our review of the tax planning scheme that the Organization was fully aware of the purpose of the pre-ordained transactions. The Organization knowingly transferred \$574,500 to private individuals to acquire shares that were to become valueless when the pre-sold assets were transferred out of the corporation. Therefore, we remain of the conclusion that the Organization made a gift to a non-qualified donee in this transaction.

2. Transfer of \$500,000 to the Data Foundation (DATA)

As explained in our previous letter, it is the CRA's view that the Organization has made a gift to a non-qualified donee by transferring funds to DATA, a 501(c)(3) non-profit organization in the United States.

You have expressed your disagreement with CRA's interpretation of article XXI of the *Canada-US Tax Convention* (the Treaty). In your Service-Related Complaint, you informed us of your intention to apply to the Competent Authority to settle this issue and requested that we hold the audit in abeyance in the meantime.

As discussed in our previous letters, the CRA's longstanding position with respect to this issue has been articulated in a number of publications. In our view, this matter is settled. While you are welcome to provide your comments with respect to this interpretation to the CRA, we are not prepared to suspend the audit.

In our view, each of the gifts, described above, in and of itself would be sufficient to warrant the revocation of the Organization's registration.

Accordingly, and as per our previous letters, we remain of the view that the Organization fails to meet the definition of charitable foundation as laid out in subsection 149.1(1) of the Act. By operating primarily, or at least collaterally, for the benefit of private individuals, it cannot be said to have been operated for exclusively charitable purposes. Further, by gifting its resources to individuals or entities that are not qualified donees, we are further of the view that the Organization failed to operate for exclusively charitable purposes. For each of these reasons, it is our view that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Failure to Maintain Adequate Books and Records & Registered Charity Information Return

Our position remains that the Organization failed to maintain and/or provide adequate books and records. A registered charity must maintain, and make available to the CRA at the time of the audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent to the audit. The Organization was provided sufficient time to prepare and provide its books and records prior to and during the course of our audit, yet chose not to make all of its records available.

The representations contained certain records that were not provided during the course of our audit; however, it remains our position that the records provided clearly do not relate to the Organization's own operations. The records pertain to the above noted transactions and were incurred by 570129 and the parties involved in that tax planning arrangement, yet were paid for by the Organization. We would also note that despite the Organization incurring minimal expenditures for the period audited, the missing information represented substantially all of the Organization's gross expenditures. It also provided further evidence that the net profit the Organization retained from the share selling arrangement was further reduced by the payment of fees incurred by 570129 *et al.*

Under subsection 149.1(3) of the Act, the Minister may revoke the registration of the registered charity in the manner as described at paragraph 168(1)(e) of the Act because the registered charity has failed to comply with or contravenes any of sections 230 to 231.5 of the Act. It is our position the Organization has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its Registered Charity Information Returns and financial statements. For this reason, there are grounds for revocation of the charitable status of Prescient Foundation.