



REGISTERED MAIL

Your file Votre référence

Our file Notre référence

Mr. David Winn
Director
The AIDS Society for Children (Ontario)

10259

January 31, 1997

Dear Sir:

Subject: Charity Tax Audit

This letter is further to an audit of the books and records of account of The AIDS Society for Children (Ontario) (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 November 30, 1995 and also some of the operations for its fiscal period ended November 30, 1996.

The results of this audit indicate that the charity may be in contravention of certain provisions of the *Income Tax Act* (the "Act"). In order for a registered charity to retain its registration, it is required to comply with the provisions of the *Act* applicable to registered charities. 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 balance of this letter describes how the Department considers that the charity contravened the Law.

Devotion of Resources to Non-Charitable Activities

The charity is registered as a charitable organization. In order to satisfy the definition of a charitable organization pursuant to subsection 149.1(1) of the Act, a charity must devote all of its resources to "charitable activities carried on by the organization itself".

The results of the audit indicate that the main activity of the charity is fundraising. In fact, we have determined that the resources expended for fundraising represent 50% of the total revenues (please refer to Schedule 1). Considering that the remaining

portion of resources is used for administration purposes, there is no resources available for charitable activities for the 1995 fiscal year (please refer to Schedule 1). We therefore conclude that your charity does not meet the requirements of a charitable organization under subsection 149.1(1) of the Act.

Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the registered charity that he proposes to revoke its registration if it ceases to comply with the requirements for its registration.

Benefits to Members

Paragraph 149.1(1)(b) of the Act defines a charitable organization, in part, as an organization, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof.

Audit evidence indicates that the charity has conferred certain benefits on its members as detailed below.

Several cheques made in 1996 were payable to "cash" and endorsed by David Winn. These expenditures were not supported by vouchers or any other documentation. Furthermore, in August and September 1995, several cheques were made payable to the name of Terry Nagy and one of his friends [REDACTED], whom had been employed at the Charity part-time. No T4s or T4As were issued for these amounts. In addition, no T4A slips were issued for the unaccountable travel allowances received in 1995 by David Winn and [REDACTED]. As at December 31, 1995, there was a loan receivable in the Charity's books, primarily from Terry Nagy, in the amount of \$5,510. As Terry Nagy is no longer a director, his exact whereabouts are unknown to the Charity.

Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the registered charity that he proposes to revoke its registration if it ceases to comply with the requirements for its registration.

Books and Records

The Act requires that registered charities maintain adequate books and records of account (subsection 230(2)). 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.

During the audit, it was found that the books and records were not maintained in a manner that allowed the auditor to verify the accuracy of the charity's reported amount of receipted donations and disbursements for the fiscal year 1995. Most expenditures tested were not supported by vouchers or any other documentation. In many cases, payments were made to directors and related persons without supporting documentation or a cancelled cheque.

The audit revealed that prior to May 1995, the charity obtained microfilmed copies of cancelled cheques from the financial institution. However, the bank statement for May 1995 contained neither cancelled cheques nor microfilmed copies of them.

Furthermore, the audit indicated that, despite the effort of the charity in reconstructing its financial accounts, the charity's general ledger could not be agreed entirely to the statement of revenues and expenditures. Additionally, the balance sheet submitted was not prepared in accordance with generally accepted accounting principles ("GAAP").

In addition, the minutes of the directors' meetings could not be located.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the registered charity that he proposes to revoke its registration if it fails to comply with or contravenes section 230 of the Act dealing with Books and Records.

Information Return

Every registered charity is required by subsection 149.1(14) of the Act to file a Registered Charity Information Return and Public Information Return with applicable schedules for each taxation year of the charity. The required form for this purpose is the T3010 and it must be filed within six months of the taxation year to which it relates.

Audit evidence revealed that the charity's return was filed incompletely, as it contained neither Schedule 1 nor Schedule 2. The financial statements for the year-ended December 31, 1995, which were not originally filed with the return, did not coincide with the charity's fiscal period ending November 30, 1995. Additionally, the balance sheet submitted was not prepared in accordance with GAAP and the financial statements could not be agreed to the general ledger.

Furthermore, the return could also not be reconciled to the financial statements because the disbursements reported to Revenue Canada were based on management's estimates and were unsupported by specific financial statement expenditures. The charity's calculation of receipts, on the return's first page, was also not totalled.

A charity is not properly meeting its information return filing requirements if it fails to exercise due care with respect to ensuring the accuracy thereof.

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

Official Donation Receipts

The Act provides various requirements in respect of official donation receipts issued by registered charities. These requirements include that:

- every official donation receipt shall contain a statement that it is an official receipt for income tax purposes (Regulation 3501(1));
- every official donation receipt shall contain the charity's name and address in Canada as recorded with the Minister of National Revenue (Regulation 3501(1)(a));
- every official donation receipt shall contain the serial number of the receipt (Regulation 3501(1)(c));
- every official donation receipt shall contain the place or locality where the receipt was issued (Regulation 3501(1)(d));
- where the gift is cash, every official donation receipt shall contain the day on which or the year in which the donation was received (Regulation 3501(1)(e));
- every official donation receipt shall contain the day on which the receipt was issued where that day differs from the day indicated thereon in respect of receiving the donation (Regulation 3501(1)(f));
- 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 (Regulation 3501(1)(g));
- every official donation receipt shall bear the signature of a responsible individual who has been authorized by the organization to acknowledge donations (Regulation 3501(1)(i)). Such authorized individuals are required to be listed on Schedule 1 of the T3010 Information Return at item 24 thereon.

The Act further provides that registered charities are required to retain duplicate copies of all official donation receipts issued. Such duplicates are required to contain the same prescribed information as the originals (subsection 230(2)).

It was discovered during the audit that all of the foregoing requirements were contravened.

It also appears that there may be a weakness in control over the use of the charity's official receipts by fundraising consultants. The charity's door-to-door canvassing is co-ordinated by a consultant called The Brown Baker (TBB). The charity is unaware of how many serially numbered receipts are in the possession of TBB at any given time. Consequently, it is unable to guard against their unauthorized use. Each charity is expected to control the use of its official donation receipts.

It was discovered that during the audit the charity's office in Ottawa issued receipts to acknowledge every pledge that it received. Such temporary receipts stated that "upon honouring your donation this becomes your official tax receipt". Contrary to IT-110R2, it also included the registration number of the charity and excluded a notation to the effect that "this copy is for your information only and is not an official receipt for income tax purposes".

Audit evidence also indicates that the official receipts could not be reconciled to the financial statements and T3010 because there was not a complete listing of them that was totalled.

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that he proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations.

Salaries

Where salaries or wages are paid, the Act requires that annual "T4 Summaries" and "T4 Statements of Remuneration Paid" be prepared by the employer (regulation 200(1)). In addition to the salaries and wages actually paid, the T4 summaries and T4 statements of remuneration paid must also include the value of all taxable benefits conferred on employees in the year (paragraph 6(1)(a)). T4 summaries and statements of remuneration paid must always be based on the calendar year as it is the basis of the individual salary and wage recipients' taxation year.

In addition to the foregoing annual reporting requirements, where an employer pays an amount in respect of an individual's salary, that employer is required to withhold certain amounts from such payments (subsection 153(1)). These amounts are in

respect of income tax, Canada pension plan, unemployment insurance, etc. and the withholdings must be remitted to the Receiver General for Canada.

The audit of the charity revealed that the charity did not issue T4 slips to any of its telemarketing employees or contractors for all remuneration bestowed upon them. It also failed to issue T4A slips to its three directors who earned a total of \$10,800 in 1995.

Conclusion

For all of the reasons indicated above, it appears to us that there are grounds for revocation of the charity's status as a registered charity.

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 *Income Tax 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.

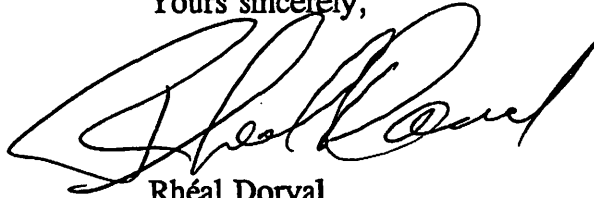
For your reference, we have attached a copy of the relevant provisions of the *Income Tax Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present any reasons why the Minister of National Revenue should not revoke the registration of the AIDS Society for Children (Ontario) 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. If you wish to obtain an extension, please contact the undersigned. Subsequent to this date, the Director of the Charities Division will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the foundation 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 naming that individual.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rhéal Dorval', written in a cursive style.

Rhéal Dorval
Assistant Director
Audit Section
Charities Division

Enclosure

THE AIDS SOCIETY FOR CHILDREN (ONTARIO)

Analysis of Resources Available for Charitable Activities (1)

| | |
|---|-------------------|
| | <u>1995</u> |
| | \$ |
| Total Revenues | <u>103 667</u> |
| Fund-Raising Costs | 51 925 |
| Management and General Administration Costs | <u>66 337</u> |
| Total Costs Not Related to Charitable Activities | \$ <u>118 262</u> |
| Costs Not Related to Charitable Activities as Percentage of Revenues | <u>114%</u> |
| Total Fund-Raising Costs as Percentage of Revenues | <u>50%</u> |
| Portion of Revenues Available for Charitable Activities | <u>0%</u> |

(1) Based on figures reported on the T3010 Information Return and the statement of income and expenses prepared by the charity



Your file Votre référence

Our file Notre référence

Mr. David Winn
Director
The AIDS Society for Children (Ontario)



0867374-09

April 30, 1997

Dear Sir:

Re: The AIDS Society for Children (Ontario)

This letter is further to our letter dated January 31, 1997 (copy enclosed) in which you were invited to submit representations to us as to why the Minister of National Revenue should not revoke the registration of the AIDS Society for Children (Ontario) (the "Charity") in accordance with subsection 168(1) of the *Income Tax Act* (the "Act").

Since representations have not been provided, I wish to advise that pursuant to the authority granted to the Minister in subsection 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 the AIDS Society for Children (Ontario). 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 paragraph 168(1)(b) 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.

1025949-01 The AIDS Society for Children (Ontario)
Toronto, Ontario

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

As of the date of the 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)1) 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 sincerely,



Carl Juneau
A Director
Charities Division

Attachments