



JAN. 08 2007

COPY

BY REGISTERED MAIL

The Meser Charitable Foundation
111 Scandia Bay N.W.
Calgary, Alberta T3L 1J9

BN: 89252 8969 RR 0001

Attention: Mr. Aamein Hug, Director

**SUBJECT: Notice of Intention to Revoke
The Meser Charitable Foundation**

Dear Mr. Hug:

I am writing further to our letter dated July 6, 2006 (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 Meser Charitable Foundation (the "Foundation") in accordance with subsection 168(1) of the *Income Tax Act* (the "ITA").

In your conversation of September 27, 2006 with Ms. Ivy Leong and Mr. Ron Bichel, it was mentioned that the Foundation had only \$600.00 left; it was then agreed to distribute these funds to another registered charity and inform the Canada Revenue Agency to proceed with the revocation of its charitable status.

Consequently, for each of the reasons mentioned in our letter dated July 6, 2006, I wish to advise you that, pursuant to the authority granted to the Minister in subsection 149.1(4) of the ITA, and delegated to me, I propose to revoke the registration of the Foundation. By virtue of subsection 168(2) of the ITA, 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), and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under subsection 149.1(4) of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.

Business Number	Name
89252 8969 RR 0001	The Meser Charitable Foundation Calgary, Alberta

Should you wish to appeal this notice of intention to revoke the Foundation's registration in accordance with subsection 168(4) of the ITA, you are advised to file a **Notice of Objection within 90 days** from the mailing of this letter. This notice is a written statement that sets out the reasons for the objection and all the relevant facts. The Notice of Objection should be sent to:

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Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
25 Nicholas Street
Ottawa, ON K1A 0L5

Consequences of a Revocation

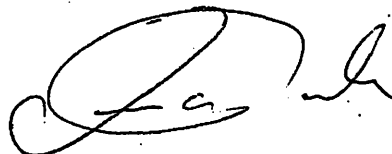
As of the date of revocation of the registration of the Foundation, which is the date upon which the above-noted notice is published in the *Canada Gazette*, the Foundation will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts.**

Additionally, by virtue of section 188 of the ITA, the Foundation will be required to pay a tax within one year from the date of the Notice of Intention to Revoke the Foundation's registration. This revocation tax is calculated on prescribed form T-2046, "*Tax Return Where Registration of a Charity is Revoked*". The return must be filed and the tax must be paid on or before the day that is one year from the date of the Notice of Intention to Revoke a charity's registration. For your reference, I have attached a copy of the relevant provisions of the ITA (Appendix "A") concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation. Form T-2046, along with the related Guide RC-4424, "*Completing the Tax Return Where Registration of a Charity is Revoked*", are also attached for your information.

Furthermore, the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (the ETA), effective on the date of revocation. As a result, it 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 1-800-959-8287. A copy of the relevant provisions of the ETA that apply to charities (Appendix "B") is also attached for your information.

I also wish to advise you that pursuant to subsection 150(1) of the ITA, 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 therefore, be filed with the Minister in prescribed form containing prescribed information.

Yours sincerely,



 Elizabeth Tromp
Director General
Charities Directorate



Canada Revenue
Agency

Agence du revenu
du Canada

July 6, 2006

THE MESER CHARITABLE FOUNDATION
111 SCANDIA BAY N.W.
CALGARY, AB. T3L 1J9

Your file / Votre référence

Our file / Notre référence

Attention: Aamein Hug

Dear Sir:

Re: BN# 892528969RR0001

Charity audit for the period 01/01/2003 to 31/12/2004

This letter is further to an audit of the books and records of The Messer Charitable Foundation (hereinafter referred to as the "Foundation") for the above noted period.

The audit has raised serious concerns about the Foundation's compliance with certain provision of the Income Tax Act (hereinafter referred to as the "Act"). For a registered charity to retain its registration, it must comply with the provisions of the *Act*. If a particular registered charity does not comply with these provisions, the Minister may revoke that charity's registration in the manner described in subsection 168(2) of the *Act*. The balance of this letter describes the concerns of the Canada Revenue Agency (hereinafter referred to as the "CRA").

ACTIVITIES

Subsection 149.1(1) of the *Act* requires a charitable foundation to be "constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or otherwise available for the personal benefit of any proprietor, member, shareholder, trustee or settler thereof, and that is not a charitable organization."

The *Act* permits a registered charity to carry out its charitable purposes, both inside and outside Canada, in only two ways:

1. It can make gifts to other organizations that are qualified donees as set out in the *Act*. Qualified donees include Canadian registered charities, certain universities outside Canada as listed in Schedule VIII of the Regulations to the *Act*, the United Nations and its agencies, and a few foreign charities.

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2. It can carry on its own charitable activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

Foreign Activities / Gifts to Non-Qualified Donees

A registered charity can carry on its charitable activities abroad through intermediaries such as an agent, a contractor or any other body, provided it can clearly demonstrate that the activities to which its resources were applied are under the Foundation's direct, effectual and constant direction and control.

The Foundation is currently funding the construction of two mosques, one in India and one in the Philippines.

Per discussions with your President Aamein Huq and documents available, it was determined that the Foundation has, to date, deposited \$25,000 into an account in the name of two individuals, Sultan Abdul Tahel Pango Al Han and Hanafi B. Abanto for the construction of a mosque in Islamic Center Turno, Dipolog City, Philippines.

It was also determined that the foundation committed \$125,000 for the purpose of building a mosque (Barahason Jame Mosque) in Shabgonj in the state of Bangladesh and is wiring \$10,000 to the mosque on a monthly basis or at the request of the contractor. The amount transferred in the 2005 and 2006 fiscal periods was C\$9,970 and C\$34,975 respectively.

On both accounts, there is no documentary evidence to show the degree of control the Foundation has over the construction of the mosques. The Foundation has not shown that the projects are the Foundation's initiatives nor has it shown that it is an active participant in the planning and/or decision making process of the projects. Documentation that we would expect to see when a construction project of this nature is undertaken would be documents such as construction plans, quotes, correspondence, copies of cheques, minutes of meetings and invoices.

Failure to obtain and maintain adequate documentary evidence supporting control and direction will mean that the Foundation will have difficulty demonstrating that it is devoting all of its resources to its own charitable activities as required by the *Act*. Without this documentary evidence, the Foundation appears to have gifted funds to non-qualified donees (i.e., organizations that do not have charitable status in Canada).

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In addition, the Foundation has not kept any books and records of the work performed on the construction of the mosques. Even if the construction of the two mosques could be demonstrated as being the activities of the Foundation, the Foundation would still not meet the requirement as set out in subsection 230(2) of the *Act* that books and records be kept in Canada. Under subsection 149.1(4) of the *Act*, the Minister would be able to revoke the registration of the Foundation, because it has failed as described in paragraph 168(1)(e) of the *Act* to comply with subsection 230(2) of the *Act*.

The Foundation also distributed funds to the Society for Education of the Intellectually Disabled (US\$2,000) located in Bangladesh, the Islamic Forum of Canada (C\$25,000) and the Madrasa Jamia Islamia (C\$4,000) in India. None of these recipients are qualified donees as defined in Section 149.1(1) of the *Act*.

The Foundation does not appear to have carried out its own activities, but appears to have made gifts to non-qualified donees, which would be contrary to the definition of a "charitable foundation", found in subsection 149.1(1) of the *Act* that requires that charitable foundations be operated exclusively for charitable purposes.

Educational Financial Assistance

The Foundation has in the past, paid the education fees for certain students in China, Egypt and Canada. For the granting of a scholarship/bursary to be an acceptable charitable activity, there must be a sufficient element of public benefit – that is, the criteria to qualify for the scholarship/bursary cannot be so restrictive that the benefit conferred would effectively be to a private group of persons. A "private group" is defined by whether the eligible beneficiaries have a personal or private link to another person or legal entity. The recipients appear to have been chosen based on their personal connections with the Foundation and its donors. In fact, every sponsored student in this case appears to be privately and personally linked to either the President or a donor of the Foundation. The benefits were not conferred on the public or a significant section thereof and consequently do not meet the public benefit requirement.

Funds distributed as scholarships exceeded C\$26,150 between 2000 and 2002.

Pursuant to subsection 149.1(1) of the *Act*, a foundation must be constituted and operated exclusively for charitable purposes to be recognized as a charity. The term "charitable" is not defined in the *Act*, and it is therefore necessary to rely on the jurisprudence in the Common Law. Charitable purposes must possess certain essential characteristics, one of which is the element of public benefit. As the Foundation's 'scholarship' program as

described above did not satisfy the public benefit test, it cannot be recognized as a charitable activity. The Foundation therefore did not devote its resources to charitable purposes and in fact gifted to non-qualified donees.

Under subsection 149.1(4) of the *Act*, the Minister may revoke the registration of the Foundation, because it has failed as described at paragraph 168(1)(b) of the *Act* to comply with the requirements of the *Act* for its registration as such.

PERSONAL BENEFIT

A "charitable foundation" is defined under subsection 149.1(1) of the *Act* as a "corporation or trust that is constituted and operated exclusively for charitable purposes, 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 settler thereof, and that is not a charitable organization;"

The Foundation gave scholarships to individuals who were privately and personally linked to either the President or a donor of the Foundation. Gifts were made to the following individuals in the following amounts:

- Ashiya (Ma Xiaoyue) attending University of China – C\$2550, transfer documents dated September 13, 2002; this individual is an acquaintance of the director/director's family
- Abu Naser of Bangladesh attending Staffordshire University of England - C\$20,000, E-mail of September 6, 2000 indicates that half of the \$20,000 was transferred; this individual is an acquaintance of the director/director's family
- Imran Mapara attending Islamic College of Canada - \$3,600, letter of October 2, 2002 states that a scholarship of \$3,600 has been awarded to the student, \$300 a month, the first cheque was for \$900 paid in October for the months of August, September and October; the director indicated that this donation was directed by the donor to go to this individual
- Yasin Tashmir Nadat attending the University of Capetown - \$12,600 RAND, letter dated March 18, 2002 stating money was cabled to Capetown University on March 15, 2002; this individual is an acquaintance of the director/director's family

Under subsection 149.1(4) of the *Act*, the Minister may revoke the registration of the Foundation, because it has failed as described at paragraph 168(1)(b) of the *Act* to comply with the requirements of the *Act* for its registration as such.

CONCLUSION

For each of the reasons listed above, it appears that there are grounds to revoke the Foundation'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 Foundation would become a taxable entity under Part I of the Act, provided it does not qualify as a non-profit organization as described in paragraph 149(1)(l) of the Act;
2. the loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the Foundation 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;
3. the possibility of a tax payable under Part V, section 188 of the Act; and
4. the loss of the Foundation's status as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (hereinafter, the ETA), which means that
 - its supplies will no longer be exempt from the Goods and Services Tax/Harmonized Sales Tax (hereinafter, the "GST/HST") under Part V.1 of Schedule V to the ETA;
 - it may, if not currently, have to register for GST/HST purposes under subsection 240(1) of the ETA;
 - it may no longer calculate its net tax for GST/HST purposes using the calculation method set out under subsection 225.1(2) of the ETA;
 - it will no longer qualify for the public service body rebate under subsection 259(3) of the ETA as a charity; and
 - it may be subject to obligations and entitlements under the ETA that apply to organizations other than charities.

For your reference, we have attached (Appendix "A"), 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. The relevant ETA provisions are also attached (Appendix "B"). If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

If you do not agree with the facts outlined above, or if you wish to present any reasons why the CRA should not revoke the registration of the Foundation in accordance with

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subsection 168(2) of the Act, we invite you to submit your representations within 30 days from the date of this letter. Subsequent to that date, the Director General of the Charities Directorate 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 subsections 168(1) and (2) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

If you require further information, clarification, or assistance, please do not hesitate to contact me at (780) 442-1957.

Thank you for your assistance and cooperation during the audit.

Yours truly,

PH
Ivy Leong
Verification and Enforcement Division
Edmonton Tax Services Office
Telephone: 780 - 442-1957
Facsimile: 780 - 495-4243
Address: 9700 Jasper Avenue
Edmonton, AB T5J 4C8
Internet: www.cra-arc.gc.ca/charities/

Charities Directorate
Toll-free: 1-800-267-2384

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