



JUN 19 2000

REGISTERED

Dr. Moses Levin
President
The Rafael Levin Fund -
Hachnosas Kallah Fund
6740 Westbury
Montreal (QC) H3W 2X6

Your file / votre référence

Our file / Notre référence

Reg. 0725481
BN119108611RR0001

Dear Dr. Levin:

Re: Notice of intent to revoke, The Rafael Levin Fund - Hachnosas Kallah Fund

We invited you in our letter dated November 26, 1998 (Appendix 1), to submit representations as to why the Minister of National Revenue (the "Minister") should not revoke the registration of The Rafael Levin Fund - Hachnosas Kallah Fund (the "Fund"). This is in response to your letter of April 13, 1999 (hereinafter, "your letter"). I apologize for the unavoidable delay in responding.

I have carefully reviewed the representations included in your letter and it is my conclusion that these representations do not provide sufficient reason why the Fund's status as a registered charity should not be revoked. I offer the following explanations to help you understand my decision.

Common law courts have recognized that the law of charities is a moving subject. This allows the legal concept of charity to evolve in ways that better reflect the current values of society. This evolution however, does not only mean expanding the definition of what is charitable. At times, it also includes refocusing the definition so that it more accurately reflects the current beliefs and principles of society as a whole. As such, what may have been regarded as charitable years ago may not necessarily be so today.

I accept that endowing poor maids may be an important part of the religious beliefs that the Fund purports to support. However, not every activity undertaken in the pursuit of fulfilling a religious belief or obligation is necessarily charitable according to the *Income Tax Act* (hereinafter, the *Act*).

Consequently, I reiterate the position taken in our letter dated November 26, 1998, in that, although the current common law definition of charity in many respects is derived from the Statutes of Elizabeth of 1601, the "endowing of poor maids" is not necessarily

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a charitable purpose still recognized in law today. As such, expenditures for the weddings of poor maids would not be considered charitable expenditures.

Notwithstanding the above, if the endowing of poor maids was indeed a charitable purpose, the Fund had an obligation, under the *Act*, of establishing that the maids or couples in question were in fact poor. The Fund did not provide any documentation, or other tangible evidence showing that the recipients of its endowing program were in fact poor. As such, it failed to meet the requirements of subsection 230(2) of the *Act*. Moreover, it did not establish that its beneficiaries were in fact proper objects of charity.

In our letter dated November 26, 1998, we raised the issue of directed donations. In that letter, we referred you to IT 110R3 *Gifts and official Donation Receipts*. IT 110R3 sets out the general rule concerning a gift under the *Act*. The general rule states:

“a gift, for purposes of sections 110.1 and 118.1, is a voluntary transfer of property without valuable consideration. Generally a gift is made if all three of the conditions listed below are satisfied:

- (a) some property-usually cash-is transferred by a donor to a registered charity;
- (b) the transfer is voluntary; and
- (c) the transfer is made without expectation of return. No benefit of any kind may be provided to the donor or to anyone designated by the donor, except where the benefit is of nominal value.”

While I agree that the beneficiaries of the Fund were not personally issued receipts, common law clearly indicates the funds were transferred to the Fund for the sole purpose of assisting named individuals. In these circumstances, the Fund had no discretion in how it was going to use the funds, therefore no true gift was made.

Moreover, there exists a second important consideration in deciding whether or not a true gift was made. According to common law, for a true gift to occur the donor has to have made the gift as a result of detached and disinterested generosity. This essential requirement is not met when individuals transfer funds to charity in exchange of the charity paying for the wedding of a daughter, a relative's or a friend. Consequently, no official receipt for income tax purposes could be issued by the Fund. This receipting practice violated subsection 118.1(1) of the *Act*.

In light of the fact that I intend to revoke the charitable status of the Fund, I believe that it is not necessary for me to address the other issues that were raised in our of November 26, 1998.

Conclusion

I therefore conclude that the Fund does not meet the requirements of a charitable organization under subsection 149.1(1) of the *Act*; that it did not keep adequate books

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and records as per subsection 230(2) of the *Act*; that it provided official donation receipts for amounts that are not "gifts" within the meaning of subsection 118.1(1) of the *Act*; and, that its resources have not been devoted to charitable purposes and activities.

Consequently, I wish to advise that for the reasons outlined above and pursuant to the authority granted to the Minister in subsection 168(1)(b), 168(1)(d) and 168(1)(e) of the *Act* and delegated to me by the Minister, I propose to revoke the registration of the Fund. 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)(c), 168(1)(b), 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
119108611 R0001	The Rafael Levin Fund - Hachnosas Kallah Fund Montreal, Quebec

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 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 can obtain information about these Rules from the Court.

Consequences of a Revocation

As of the date of revocation of the registration of the Fund, which is the date upon which the above-noted notice is published in the Canada Gazette, of the Fund 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, of the Fund may be subject to the tax pursuant to Part V, section 188 of the *Act*. For your reference, we have attached 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 (Appendix 2).

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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* that states the definition of a non-profit organization and subsection 149(12) that states the filing requirements of a non-profit organization.

The Fund might be eligible for non-profit organization status under paragraph 149(1)(l) of the *Act*. Determination of such status is the responsibility of our Tax Services Offices. If you need further clarification in this respect, you may contact the local Tax Services Office. I would stress, however, that such recognition does not convey authority to issue official donation receipts for income tax purposes.

Yours truly,



Enikő Vermes
Acting Director General
Charities Directorate

Attachments

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REGISTERED

Dr Moses Levin
President
The Rafael Lewin Fund-
Hachnosas Kallah Fund
6740 Westbury
Montreal, Q.C.
H3W 2X6

Your file Votre référence

Our file Notre référence

BN:11910 8611 RR0001
Reg:0725481-05
Ph: (613) 954 1362

November 26, 1998

Dear Dr Levin:

Re: Charity Tax Audit

The books and records of account of The Rafael Lewin Fund-Hachnosas Kallah Fund formerly Rafael Lewin Fund (the "Charity") were audited by a representative of the Department for the period January 01, 1994 to December 31, 1995. The results from this audit were not formally communicated to you because of workload demands in the Charities Division. We apologise for this delay. This letter addresses issues identified during the field audit and the review of the Charity's file.

The audit review has raised serious concerns about the Charity's compliance with certain provisions of the *Income Tax Act* (the "Act"). For a registered charity to retain its registration, it must comply with these provisions, even if amounts are small and you requested permission to derogate to these provisions, the Minister may revoke that charity's registration in the manner described in subsection 168(2) of the Act.

The audit identified the following concerns:

1. Objectives and Activities

The Statement of Activities filed with the original application for registration for charitable status read: "To provide assistance without any charge of interest or service charge for needy people.... The sole purpose of assistance will be to help a family in need, that is people who are considered by the committee to be 'poor'....A scale will be decided on and those who fall below the level will qualify as 'needy'. This will not preclude assistance to widows of other people living by themselves if they are considered to be on poverty level.

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APPENDIX 1

Canada

The assistance will be considered at every meeting of the Board. Maximum assistance to be given is \$1500.00".

Income Tax Act (the Act) does not provide definitions of the words "charitable" and "charity". The Department has therefore adopted the principles of common law as they relate to charity. Canadian courts have adopted the English common law in this area, and the majority of precedents governing charity are still of English origin. Therefore, based on the jurisprudence, charitable purpose has been categorized into four general headings. These are:

1. relief of poverty;
2. advancement of education;
3. advancement of religion, and
4. other purposes beneficial to the community, not falling within the three preceding head.

It is still recognized that, in order to be charitable at law, a purpose must fall within one of the four heads of charity.

Audit evidence has confirmed that "aiding the needy" is being carried out by the Charity by providing financial aid to needy couples so that they may get married in the traditional Jewish way. This fact is further corroborated by you on page 3 of T3010 Information Return wherein you confirm that the primary purpose of the Charity is "To provide financial aid to needy couples for wedding expenses".

In the preamble to the Statute of Elizabeth, "the marriage of poor maids" is enumerated as a charitable purpose. On this subject, Tudor (1984) is of the opinion that the gifts for the promotion of marriage are charitable on the ground that they are beneficial to the community and fall under McNaughton's fourth head. However, in National Anti-vivisection vs I.R.C., Lord Wright says:

"eleemosanary trusts may as economic ideas and conditions and ideas of social service change cease to be regarded as being for the benefit of the community"

Based on this premise, it is our opinion that the marriage of "poor maids" is a part of the Statute of Elizabeth which has fallen into disuse and is no longer relevant today or is being considered as obsolete. It could therefore be argued that in our society, Canadians are no longer prepared to recognize as charitable an organization established to provide for the marriage of "poor maids".

Notwithstanding the fact that the couples wishing to be married in the traditional Jewish way may have been poor and needed financial support to do so, the auditor was not provided with copies of the requisite written applications for such support justifying their eligibility. Also, donations in excess of the maximum \$1,500 were made in some instances. This is in contravention of the objectives of the Charity.

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Under paragraph 168(1) (b) of the Act, the Minister may, by registered mail, give notice to the *Charity* that he proposes to revoke its registration because it fails to comply with the requirements of this act for its registration as such.

2 - Directed Donations and Official Donation Receipts:

The audit also revealed that some gifts for which official donation receipts were issued were directed to a person or family designated by the donor. Examples of some of these are as follows:

<u>Date:</u>	<u>Recipient</u>	<u>Amount</u>	<u>Reason</u>
Jan. 17, 1995	[REDACTED]	\$3,200	[REDACTED]
Mar. 27, 1995	[REDACTED]	\$2,197	[REDACTED]
Mar. 29, 1995	[REDACTED]	\$2,475)	[REDACTED]
Apr. 03, 1995	[REDACTED]	\$ 511)	[REDACTED]
May 03, 1995	[REDACTED]	\$ 393)	[REDACTED]
Oct. 11, 1995	[REDACTED]	\$ 138)	[REDACTED]
Feb. 08, 1994	[REDACTED]	\$2,500)	[REDACTED]
Mar. 15, 1994	[REDACTED]	\$ 500)	[REDACTED]
Apr. 12, 1994	[REDACTED]	\$ 500)	[REDACTED]
Apr. 12, 1994	[REDACTED]	\$ 500)	[REDACTED]
Jan. 07, 1994	[REDACTED]	\$2,500)	[REDACTED]
Mar. 11, 1994	[REDACTED]	\$2,000)	[REDACTED]

Paragraph 3 of Interpretation Bulletin IT - 110R3, *Gifts and Official Donation Receipts*, defines a gift as a voluntary transfer of property without valuable consideration. In other words, the donor must freely dispose of his or her property (cash, security or something tangible) without conditions, from detached and disinterested generosity, out of affection, respect, or charity or like impulses. This is a long standing legal definition and is not an innovation by Revenue Canada. A copy of the said bulletin is enclosed for your information.

A charity therefore cannot issue an official donation receipt where the donor has directed the charity to give the donation to a specified person or family. Such a gift is considered to be made to the person or family, and not to the charity. The onus is on the charity to spend its resources on the charitable activities for which it was granted the charitable status.

It also appears from the above that parents or relatives used the Charity as a conduit for receiving tax deductible official donation receipts by financing the wedding expenses of their children.

The official donation receipts also did not include the statement "for income tax purposes".

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

3 - Inadequate Books and Records

The Act, per subsection 230(2), requires that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister. 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 the reported information.

In carrying out its activities in Canada, a charity must ensure that the charity's resources must be devoted to its own activities. Practically speaking, that means that the charity must be able to account for the expenditure of its funds in the same manner and to the same degree regardless of the location of the activities.

The Charity failed to maintain adequate books and records as follows:

- total amount of official donation receipts issued could not be reconciled due to inadequate records.
- amount of donations for which official donation receipts were issued could not be traced to the duplicate deposit books. The deposit slips prepared by the Charity were not detailed enough to ensure an adequate verification of the deposits of donations received.
- Source documents, such as cancelled cheques or signed application forms, supporting the financial aid to the "needy" were not made available for review.
- Disbursements per financial statements could not be readily verified. Some of the disbursements that were transacted as "contributions to wedding expenses" do not qualify as amounts spent on charitable programs carried on by the Charity since these expenses were directed donations as explained in 2 above. This discrepancy also has a negative effect in the proper calculation of the disbursement quota.

The requirement for the proper maintenance of books and records are contained in the attached Information Circular 78-10R2 and Appendix G of Information Circular 80-10R.

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

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4 - Information Return T3010:

Every registered charity is required by subsection 149.1(14) of the Act to file a Registered Charity Information and Public Information Form T3010, with applicable schedules for each taxation year of the Charity.

Audit evidence and our review indicated that a donation amount of \$3,720 was made to a qualified donee - [REDACTED], which should have been reported separately on line 113 of the T3010 form. Consequently, Section G of the declaration should have been completed.

A charity is not properly meeting its information return filing requirements when it fails to exercise due care with respect to insuring the accuracy thereof. The return must include all

- relevant confidential schedules, and
- financial statements for the corresponding period.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the Charity that he proposes to revoke its registration because it fails to file an information return as required under the Act or its Regulations.

5 - Unexplained Expenditures

1. The March 25, 1994 disbursement to [REDACTED] was for weddings in Israel. The objectives of the Charity did not specifically state that the Charity would be funding wedding expenses for the needy in Israel. Please explain.

2. On March 28, 1994, a loan of \$3,000 was made to [REDACTED]. No details of this loan was provided. We therefore request information on the nature of this loan e.g. (a) the purpose of this loan; (b) the financial status of the borrower; (c) the reason for extending the \$1,500 threshold, (d) if the borrower is employed, the name of the employer or if self-employed - the name of the business of the borrower.

Conclusion:

For all of the reasons and discrepancies indicated above, it appears to us that there are grounds for revocation of charitable status of the 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 organisation as described in paragraph 149(1)(l) of the Act;

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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 *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. 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 Charity 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 and explicitly authorizing that individual to discuss your Charity's file with us.

Should you have any questions on these matters, please contact Danny Rai at (613) 954-1362 or myself at (613) 954-0939, or write to Charities Division, 320 Queen Street, 18th Floor, Ottawa, Ontario, K1A 0L5.

Yours sincerely,



Rhéal Dorval, CGA.
Assistant Director - Audit
Charities Division

enclosures:

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