



Jan 16 2006

Your file Votre référence

Our file Notre référence

REGISTERED MAIL

The Skies Above Canada Foundation
Attention: Mr. Bruce Torrie
903 Dawn Lane
Victoria, British Columbia
V9B 5A6

BN: 89887 7592 RR0001
File #: 1033745

Subject: Notice of Intent to Revoke The Skies Above Canada Foundation

Dear Mr. Torrie:

I am writing to you further to our letter dated May 5, 2005 (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 Skies Above Canada Foundation (the "Charity") in accordance with subsection 168(1) of the *Income Tax Act* (the "Act").

We have received your written response dated July 5, 2005 in which you stated that the Charity is "content with your decision to revoke our charitable status."

Our view remains unchanged in light of this information, and I wish to advise you 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 Skies Above Canada Foundation. 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)(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.

File Number	Business number	Name
1033745	89887 7592RR0001	The Skies Above Canada Foundation Victoria, BC

Should you wish to appeal this notice of intention to revoke the charity's registration, you must file an objection. To file an objection, you must submit a written document setting out the reasons for the objection and the relevant facts. This must be filed within 90 days from the date of the present letter and sent to:

Assistant Commissioner
Appeals Branch
25 Nicholas Street
Ottawa, ON K1A 0L5

Consequences of a Revocation

As of the date of revocation of the registration of The Skies Above Canada Foundation, which is the date upon which the above-noted notice is published in the *Canada Gazette*, The Skies Above Canada 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, The Skies Above Canada Foundation may be subject to tax pursuant to Part V, section 188 of the *Act*. For your reference, I 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.

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 therefore, be filed with the Minister in prescribed form containing prescribed information.

However, The Skies Above Canada Foundation might be eligible for non-profit organization status which is defined in paragraph 149(1)(1) of the *Act*. Subsection 149(12) states the filing requirements for a non-profit organization. Determination of an organization's status as a non-profit organization is the responsibility of our Tax Services Offices. I would stress that such recognition does not convey authority to issue official donation receipts for income tax purposes.

If you need further information with regard to non-profit status, please contact the Vancouver Island Tax Services Office directly at 1415 Vancouver Street, Victoria BC, V8V 3W4.

Yours Sincerely,

Elizabeth Tromp
Director General
Charities Directorate

Attachments



REGISTERED MAIL

~ May 5, 2005

THE SKIES ABOVE CANADA FOUNDATION
903 DAWN LANE
VICTORIA, BC
V9B 5A6

BN Number
898877592 RR0001
File Number
1033745

Attention: BRUCE TORRIE

Dear Mr. Torrie:

**Re: Audit of The Skies Above Canada Foundation
Business Number: 89887 7592 RR0001**

This letter is further to an audit of the books and records of The Skies Above Canada Foundation (the "Charity"), which was conducted by the Canada Revenue Agency ("CRA"). The audit relates to the operations for the fiscal periods ending April 30, 2002 & 2003.

The audit indicates that the Charity is in contravention of certain provisions of the *Income Tax Act* (the "Act") or its regulations. 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, the Minister may revoke the charity's registration in the manner described in subsection 168(2) of the *Act*.

The following information was collected during our review of the books and records of the Charity and the interview with yourself on January 6, 2005. The balance of this letter describes the grounds for revocation with respect to the operations and activities of the Charity.

Gifts to Non-Qualified Donees

The *Act* permits a registered charity to carry out its charitable purposes in one of two ways. First, it can fund other organizations that are qualified donees as defined in the *Act* and second, it can carry on its own charitable activities.

The audit indicated that the Charity's resources have been given to organizations that are not qualified donees. Identified non-qualified donees include: [REDACTED] Payments made to non-qualified donees do not constitute charitable activities in and of themselves.

The following non-qualified donees received the following amounts from the Charity in the April 30, 2002 fiscal year end:

• [REDACTED] -	\$21,000
• [REDACTED] -	6,000
• [REDACTED] -	11,000

	\$38,000

There was a total of \$45,899 of expenditures per financial statements, but \$59,191 per T3010. The difference was due to the fact that expense receipts could not be reconciled to summary totals (financial statements). The expense receipts also were not reconcilable to the T3010. We will use the amount on the T3010 as the base. Therefore a total of \$38,000 out of total expenditures per T3010 of \$59,191 was given to non-qualified donees. That amounts to 64.2% of the expenditures of the charity.

Since the organization has not devoted substantially all of its resources to its own charitable activities or by way of gifts to qualified donees, it has failed to meet the definitional requirement of paragraph 149.1(1)(a) of the *Act*. Therefore under paragraph 168(1)(b) of the *Act*, the CRA, may by registered mail give notice to the charity that it proposes to revoke its registration because it ceases to comply with the requirements of the *Act* related to its registration as such.

Devotion of Resources to 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*, "charitable organization" means an organization... all the resources of which are devoted to charitable activities".

In 2002, the Charity had given at least \$38,000 to non-qualified donees. The Charity expended the following amounts on other than charitable activities:

Executive Directors Expenses	\$ 5,619
Annual Report Industry Canada	30
Speaker Travel	5,000
Publication	5,400

	\$16,049

We determined that 91.4% $[(16,049+38,000)/59,191]$ was spent on non-charitable activities. That would mean that only 8.7% or \$5,142 was spent on charitable activities in 2002.

In 2003, the Charity expended the following amounts on other than charitable activities:

Directed donation for lecture in the Kootenays	\$4,200
Meetings & Consultations	1,822
Continuing education	687
Postage/printing	1,797

	\$8,506

There was a total of \$17,124 of expenditures per financial statements and per T3010. We determined that 49.7% $(8,506/17,124)$ was spent on non-charitable activities if we give the Charity the benefit of the doubt that the Awards Ceremony is charitable. That would mean that only 50.3% or \$8,618 was spent on charitable activities.

The Charity does not meet the definition of a "charitable organization" according to subsection 149.1(1) of the *Act* as not all of its resources are devoted to charitable activities. The Minister may therefore, in the manner described in section 168 of the *Act*, revoke the registration of the Charity.

Disbursement Quota

Each year, a charitable organization must spend amounts that are at least equal to 80% of the amounts for which it issued donation receipts in its immediately preceding year. To meet the disbursement quota, a registered charity must take into account only monies spent directly on charitable activities or on gifts to qualified donees.

As per the previous page, \$44,049 in 2002 and \$8,618 in 2003 was expended for non-charitable activities. Over the audit period substantially all of the funds distributed by the Charity were for non-charitable activities. As a result, the Charity has a disbursement shortfall in 2002 of \$43,074 and \$34,735 in 2003.

The Charity therefore has not met its disbursement quota over the audit period.

If the Charity does not meet its disbursement quota obligation as defined under subsection 149.1(1) of the *Income Tax Act* it's charitable registration may be revoked under subsection 149.1(2) of the *Income Tax Act*.

Directed Donations

Under IT-110R3, paragraph 15, section (g) states that "a charity may not issue an official receipt for income tax purposes if the donor has directed the charity to give the funds to a non-qualified donee."

This would be a gift made to the person or organization and not to the charity. A donation receipt can only be issued for a donation where the funds are directed to a particular program operated by the charity.

The Charity has been issuing donation receipts to donors and flowing these funds, at the request of the donors, to organizations that run activities that are not programs operated by the Charity.

During the 2002 fiscal period, a donation to the Charity of \$5,000, donated by [REDACTED] was directed to [REDACTED]

During 2003, a U.S. non-profit sent \$4,200 to the Charity to pay for a non-related party's expenses to attend an environmental conference.

If a charity issues a receipt for a gift or donation otherwise than in accordance with the *Act* as per paragraph 168(1)(d) of the *Income Tax Act* it's charitable registration may be revoked.

Official Donation Receipts

The audit indicated that the donation receipts issued by the Charity did not comply with the requirements of Regulation 3501 of the *Act* and Information Bulletin IT110-R3 entitled, "Gifts and Official Donation Receipts" as follows:

- Receipts did not include the Charity's address in Canada as recorded by the Minister, as is required by Regulation 3501(1)(a).
- Receipts did not include the address of the donor as required by Regulation 3501(1)(g).
- Official donation receipts were given where funds were directed to non-qualified donees, which is not permitted under IT-110R3 Paragraph 15(g).
- There was no documentation supporting the value of the Gifts in Kind donated to the Charity. (see guide P113 – Gifts and Income Tax)

In the future, please ensure that these requirements are followed.

Lending the Charity's Registration Number:

In addition, the Charity has offered its charitable registration number to non-registered organizations to use for their own fundraising purposes. The practise of "lending" a charitable registration number to another organization for its own fundraising activities is not an accepted use of a charity's registration number.

In the letter dated October 24, 2001 addressed to [REDACTED] The Skies Above Foundation authorized the use of its registration number for the purpose of funding the [REDACTED] run by [REDACTED] of the Environment Fund.

In the letter sent to [REDACTED] states that the "Skies Above Canada Foundation" sponsors the scientific research and educational component of [REDACTED] and any funding received for the project [REDACTED] will be channelled through the "Skies Above Foundation".

If a charity issues a receipt for a gift or donation otherwise than in accordance with the *Act* as per paragraph 168(1)(d) of the *Income Tax Act* it's charitable registration may be revoked.

Books & Records

Section 230(2) and paragraphs 230(2)(a), (b) & (c) of the *Income Tax Act* requires every registered charity to maintain adequate records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the *Act*. The purpose of this requirement is to enable the charity to accurately provide CRA with the information required by the *Act* as well as to enable CRA to verify the accuracy of reported information through conducting of audits.

The books and records of the Charity were generally disorganized, poorly maintained and were not complete. No minute books were available for review. As a result the auditor was unable to confirm all the information reported in the Charity's annual returns.

If the charity fails to comply with the books and records requirements under section 230 of the *Income Tax Act* its charitable registration may be revoked under paragraph 168(1)(e) of the *Act*.

Conclusion

For each of the reasons indicated above, it appears to us that there are grounds to revoke The Skies Above Canada 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 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*.

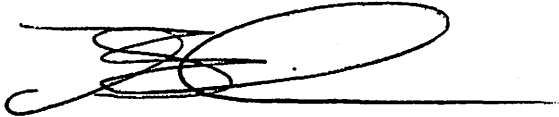
For your reference, we have attached a copy of the relevant provisions of the *Income Tax Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present reasons why the Minister should not revoke the registration 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**. Subsequent to this date, the Director of Charities will decide whether or not to proceed with the issuance of a Notice of intention to revoke the registration in the manner described in section 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 file with us.

Should you have any questions regarding these matters I can be contacted at 363-3502.

Sincerely,



Shaun Tubman, CGA
Verification and Enforcement Division

Telephone: (250) 363-3502
Fax: (250) 363-3000
Address: 1415 Vancouver Street
Victoria BC V8V 3W4