Topics

• Nonprofit corporation v. tax-exempt organization
• Qualifying for tax-exempt status
• Contributions
• Filing Responsibilities
Terminology

• Nonprofit Corporation
  o State-level designation – Chapter 1702 of the Ohio Revised Code
  o Can be formed for any purpose
  o Members instead of shareholders
  o Cannot distribute profits to private individuals

• Tax-Exempt Organization
  o Federal income tax designation
  o Must be organized and operated for specific purposes
  o Generally must apply for recognition as a tax-exempt organization and receive a determination letter from the IRS

• A nonprofit corporation is NOT automatically a tax-exempt organization
Nonprofit Corporation

Ohio Revised Code § 1702.01(C):

“Nonprofit corporation” means a domestic or foreign corporation that is formed otherwise than for the pecuniary gain or profit of, and whose net earnings or any part of them is not distributable to, its members, directors, officers, or other private persons, except that the payment of reasonable compensation for services rendered and the distribution of assets on dissolution as permitted by section 1702.49 of the Revised Code is not pecuniary gain or profit or distribution of net earnings.
Nonprofit Corporation

What the definition says:
- The corporation cannot distribute its profits or net earnings to private persons
- The payment of reasonable compensation for services rendered is permitted

What the definition does not say:
- The corporation cannot earn a profit
- The corporation must be formed for specific purposes
- The corporation is exempt from taxation
Tax Exemption

• 501(c)(3): Charitable organization
• 501(c)(4): Social welfare organization
• 501(c)(5): Labor, agricultural, or horticultural organizations
• 501(c)(6): Business leagues, chambers of commerce, professional football leagues
• 501(c)(7): Social clubs
• 501(c)(8): Fraternities and sororities
501(c)(3): Charitable Organizations

- **Charitable**
  - Relief of the poor, the distressed, or the underprivileged
  - Advancement of religion, education, or science
  - Erecting or maintaining public buildings, monuments, or works
  - Lessening the burdens of government
  - Lessening neighborhood tensions
  - Eliminating prejudice and discrimination
  - Defending human and civil rights
  - Combatting community deterioration and juvenile delinquency

- **Exempt Purposes**
  - Religious
  - Charitable
  - Scientific
  - Testing for public safety
  - Literary
  - Educational
  - Foster amateur sports competition
  - Prevention of cruelty to children or animals
Organized and Operated Exclusively for Exempt Purposes

**Organized:**
- Must be a corporation, trust, or unincorporated association
- Organizing documents must limit the organization’s purpose to exempt purposes
- Organization’s assets must be permanently dedicated to an exempt purpose

**Operated:**
- Organization must engage primarily in activities that accomplish exempt purposes
- Organization must serve a public interest, not private interests
- Limits on propaganda, attempting to influence legislation, and intervening in political campaigns
Public Interests v. Private Interests

No Private Inurement
- Net earnings may not inure in whole or in part to the benefit of private individuals
- Focus on “insiders”
- Cannot pay dividends to members
- Cannot pay more than fair market value for salaries, rents, goods, and services

No Private Benefit
- Organization must serve a public interest, not private interests
- Look at class of individuals benefited by the activities of the organization
Public Charity v. Private Foundation

• Private Foundations
  o Default classification: Every 501(c)(3) organization is a private foundation unless it qualifies as a public charity
  o More limits on deductibility of contributions
  o Certain excise taxes apply only to private foundations

• Public Charities
  o Churches
  o Schools
  o Organizations that provide hospital or medical care
  o “Publicly-Supported Organizations”
    • Substantial part of support in the form of contributions from other public charities, governmental units, and/or the general public
    • Not more than 1/3 of support from gross investment income, and more than 1/3 support from contributions, membership fees, and gross receipts from activities related to exempt functions
Contributions

• Most 501(c)(3) organizations are eligible to receive tax-deductible contributions (IRC § 170)

• Contribution Limitations:
  o Private foundations: 30% of AGI
  o Public charities: 50% of AGI

• Contributions to organizations whose tax-exempt status is pending
  o Form 1023 is under review, so no determination letter
  o Contributions are deductible while the application is pending, as long as tax-exempt status is later granted to the organization. If tax-exemption is denied, the donor must amend his/her tax return and remove the charitable deduction
Contributions

• Written acknowledgement for donations in excess of $250
  o Name of organization
  o Amount of cash contribution
  o Description (but not value) of non-cash contribution
  o Statement that no goods or services were received in exchange for the donation

• Written disclosure for quid pro quo contributions in excess of $75
  o Amount of contribution deduction is limited to the excess of the donation over the value of goods or services received
  o Disclosure must include a good faith estimate of the value of the goods or services that the donor will receive
  o $10 penalty per contribution (up to $5,000 per fundraiser or mailing) if statement is not provided
Filing Requirements

- IRS Form 1023: Application for Recognition of Tax Exemption
- IRS Form 990: Annual Information Return
- Ohio Attorney General
  - Initial registration
  - Annual report
- Ohio Secretary of State
  - Statement of Continued Existence (every 5 years)
IRS Form 1023

• All 501(c)(3) organizations must file Form 1023 and receive a determination letter from the IRS acknowledging the organization’s tax-exempt status

• Exceptions:
  o Churches, synagogues, temples, and mosques
  o Gross receipts of less than $5,000 per year

• Effective Date of Tax-Exemption:
  o If Form 1023 is filed within 27 months following the formation of the organization, tax-exemption will be retroactive to the date of formation
IRS Form 1023

• Always check Form 1023 for updates before filling out the application

• Key Provisions:
  o Part IV: Narrative Description of Activities
  o Part V #5: Conflict of Interest Policy
  o Part IX: Financial Data
  o Part X: Public Charity Status
  o User Fee: $400 or $850

• Note: If IRS approves tax-exempt status, the entire Form 1023 and attachments will be open to public inspection

• www.stayexempt.irs.gov
IRS Form 990

• Annual Information Return
  • Due Date: the 15th day of the 5th month after the end of the organization’s fiscal year
    o Can request an automatic 3-month extension to file (Form 8868)

• Late filing penalties:
  o Gross receipts under $1M: $20 per day, up to the lesser of $10,000 or 5% of gross receipts
  o Gross receipts over $1M: $100 per day, up to $50,000
  o Penalties also apply if the filing is incomplete or incorrect

• Failure to file a Form 990 for 3 consecutive years will result in automatic revocation of tax-exempt status
Ohio Attorney General

• Ohio Attorney General has the authority to regulate nonprofit organizations in Ohio
  o Prime focus is to ensure that the assets of charitable organizations are not diverted for personal use

• Charitable organizations must register with the Ohio Attorney General and file annual information reports
  o Exceptions:
    • Schools, PTAs, and booster clubs
    • Churches

• Due date for annual report is the due date of the organization’s IRS Form 990 (with extensions)

• Annual Filing Fee: Up to $200 (based on assets)
Ohio Secretary of State

• Statement of Continued Existence
  o Must be filed by all foreign and domestic nonprofit corporations in Ohio
  o $25 Filing Fee
  o File every 5 years
Steps for Forming and Maintaining a Nonprofit, Tax-Exempt Organization

Formation:
• Articles of Incorporation (Ohio Secretary of State)
• Employer Identification Number (EIN)
• Initial Minutes
• Code of Regulations
• Conflict of Interest Policy
• IRS Form 1023 Application for Recognition of Tax-Exemption and Form 2848 Power of Attorney
• Registration with the Ohio Attorney General

Ongoing:
• IRS Form 990
• Annual Report (Ohio Attorney General)
• Statement of Continued Existence – every 5 years (Ohio Secretary of State)
IRS Publications

- Pub. 526: Charitable Contributions
- Pub. 557: Tax-Exempt Status for Your Organization
- Pub. 598: Tax on Unrelated Business Income of Exempt Organizations
- Pub. 1771: Charitable Contributions – Substantiation and Disclosure Requirements
- Pub. 4220: Applying for 501(c)(3) Tax-Exempt Status
- Pub. 4221-PC: Compliance Guide for 501(c)(3) Public Charities
- Pub. 4741: The New Form 990 – What Tax Exempt Organizations Need to Know
- Pub. 4742: New Form 990 Preparation Checklist
- Pub. 4752: The New e-Postcard (Form 990-N) – What Smaller Organizations Need to Know to Stay Exempt
Questions?

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