

OBTAINING 501(c)(3) STATUS FOR YOUR BOOSTER CLUB

Michael L. Brungo, Partner

412.242.4400 | mlb@mbm-law.net

Kathleen C. McConnell, Associate

412.242.4400 | kcm@mbm-law.net

MAIELLO BRUNGO & MAIELLO LLP

DEFINITIONS

- **Legal Entity**
- **Non-Profit**
- **Tax Exempt**

LEGAL ENTITY (corporate) status -

A lawful or legally standing association, corporation, partnership, proprietorship, trust, or individual. Has legal capacity to (1) enter into agreements or contracts, (2) assume obligations, (3) incur and pay debts, (4) sue and be sued in its own right, and (5) to be accountable for illegal activities.

NON-PROFIT STATUS -

Nonprofit organizations are institutions that conduct their affairs for the purpose of assisting other individuals, groups, or causes rather than garnering profits for themselves. Nonprofit groups have no shareholders; do not distribute profits in a way that benefits members, directors, or other individuals in their private capacity; and (often) receive exemption from various taxes in recognition of their contributions to bettering the general social fabric of the community.

TAX EXEMPT STATUS -

not subject or liable to taxation - A non-profit entity can fail to qualify for tax exempt status.

WHY FORMALIZE LEGAL ENTITY STATUS?

- **Compliance**
- **Continuity, Structure, Purpose, Management**
- **Power to Contract, Sue or be Sued**
- **Eligible for EIN, bank account, insurance**
- **Eligible for income tax exemption and donor donations qualify as tax deductible for the donor**
- **Statutory limits on liability of members and directors**

ATTRACT DONORS -

The IRS provides that a person can deduct charitable contributions from federal income tax only if made to a qualified organization. Most large donors verify 501(c)(3) status before contributing.

REGULATORY COMPLIANCE –

IRS regulations require that organizations having \$5,000 or more per year in gross receipts averaged over 3 year period, register with the IRS for tax exemption. PA requires registration by organizations having \$25,000 in gross receipts in any year.

LIABILITY PROTECTIONS -

PA statutes provide that members shall not be liable for a debt, obligation or liability of the corporation of any kind or for the acts of any member or representative of the corporation, and, if adopted in the by-laws, directors shall not be personally liable, as such, for monetary damages for any action taken unless: (1) the director has breached or failed to perform the duties of his office under this subchapter; and (2) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

(b) Exception.--Subsection (a) shall not apply to: (1) the responsibility or liability of a director pursuant to any criminal statute; or (2) the liability of a director for the payment of taxes pursuant to Federal, State or local law.

TYPES OF NON-PROFIT LEGAL ENTITIES:

- **Non-profit unincorporated association**
- **Non-profit corporation**
 - (stock/non-stock)
 - (member/non-member)
 - **A larger non-profit corporate entity can have local units or divisions**
- **Other: Trust, Partnership, LLC (not suited to booster-type organizations)**
- **IRS recognizes group exemptions**

**THE NONPROFIT
UNINCORPORATED
ASSOCIATION
VS.
THE NONPROFIT
CORPORATION**

HOW TO INCORPORATE:

- **File Articles of Organization (for 501(c)(3) status see IRS sample articles with required clauses) (\$125 filing fee)**
- **Publish notice of incorporation (2 local papers, one a legal journal if possible) (\$200-300)**
- **[If Members, establish membership registry and hold initial meeting]**
- **Name Directors, name officers, adopt other organizational minutes as needed**
- **Adopt By-Laws and Conflict of Interest Policy**
- **Obtain EIN from IRS**
- **Establish a system for record keeping and accounting**

HOW TO APPLY TO THE IRS FOR 501(C)(3)

STATUS:

- Form a qualifying non-profit legal entity
- Obtain EIN
- Complete and file 1023 application
- Receive IRS exemption letter (6 months to 1 ½ years for response currently)
- Ongoing compliance with annual reporting requirements, and qualifying requirements

HOW TO REGISTER WITH THE PA BUREAU OF CHARITABLE ORGANIZATIONS:

- Exempt if receipts are less than \$25,000
- Registration packet available for download at http://www.portal.state.pa.us/portal/server.pt/community/charities/12444/x_registration_information_for_charitable_organizations/571847
- Include PA Form BC-10, most recent IRS return 990, or PA Form BL-23 and copies of Articles and By-laws

HOW TO FILE FOR PA SALES TAX EXEMPTION

- **Complete and file "Application for Sales Tax Exemption" (form REV-72) with copy of IRS form 990 and copies of articles and by-laws**
- **PA Sales Tax exemption is limited to purchases made on behalf of the institution's charitable purpose. The purchase must be made in the name of the institution paid by funds from the organization. The institution must issue an exemption certificate (REV-1220) to the seller in lieu of the payment of tax**
- **If you are engaging in fund raisers where there is a sales tax liability (selling to the general public) you may be required to register for a sales tax number. You may register for a sales tax license number at www.pa100.state.pa.us**

ONGOING COMPLIANCE-REPORTING:

- **Annual returns: IRS Forms 990-N, 990-EZ, 990 due 15th day of 5th month following financial year end**
- **PA Non-profit Corporations – file an annual report form with Dept of State on or before April 30 of each year in which there has been a change in corporate officers during the preceding calendar year**
- **PA Dept of Revenue – If gross receipts exceed \$25,000 file BCO-10 (Charitable Organization Registration Statement) due 135 days after end of fiscal year**

ONGOING COMPLIANCE-JEOPARDIZING

EXEMPTION:

- **Inurement/private benefit**
- **Lobbying/political activity**
- **Not filing returns**
- **Substantiation and disclosure**
 - **Charitable contributions (IRS Publ. 1771)**
 - **Public disclosure**

This information is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that the federal tax advice (if any) contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed herein.

OBTAINING 501(c)(3) STATUS FOR YOUR BOOSTER CLUB

Michael L. Brungo, Partner

412.242.4400 | mlb@mbm-law.net

Kathleen C. McConnell, Associate

412.242.4400 | kcm@mbm-law.net

MAIELLO BRUNGO & MAIELLO LLP