

## FORMING CHARITABLE ORGANIZATIONS IN ILLINOIS

BY LAWRENCE R. LaSUSA

You receive a call from a client who asks to meet with you regarding a new business venture. He tells you that the business venture he contemplates is, in fact, a charitable organization. Your brain spins in four different directions at once. You are familiar with general corporate matters, partnerships and the like, but a charitable organization is not in the realm of your experience. This article will provide a guide to forming a charitable organization; achieving tax-exempt status with the Internal Revenue Service (IRS); as well as complying with the relevant regulatory agency requirements.

### **Preliminary Concern: Tax-Exempt Status**

The IRS generally recognizes that organizations formed for charitable, religious, educational or scientific purposes are entitled to tax-exempt status. Not all not-for-profit organizations are tax-exempt. Fully discuss with your client the purposes and goals of the charitable organization as well as how your client

proposes the organization will achieve those goals.

To determine if the organization will qualify for tax-exempt status, review IRS Publication 557 ("Tax-Exempt Status for Your Organization"). This publication discusses the rules and procedures for organizations that wish to obtain an exemption from federal income tax under Section 501(A) of the Internal Revenue Code ("the Code"). To order publications and forms, call the IRS' toll-free telephone number 1-800-829-FORM.

### **Select A Structure For The Charitable Organization**

An organization must decide if it will operate as an incorporated association or an unincorporated association. The purpose and activities of the organization, not the structure, will determine tax-exempt eligibility. The Code recognizes a variety of alternative structures including private foundations, public charities and charitable trusts. The structure chosen should be one which is easily identifiable and commonly known to professionals and laypersons. Not-for-profit corporations offer distinct advantages over unincorporated associations. Courts traditionally afford corporate directors, officers and shareholders a shield against liability for acts within the scope of powers and the purpose of the corporation. Most professionals and laypersons are familiar with corporate structure and procedure. Once the not-for-profit corporation files and records its

Articles of Incorporation and receives a Certificate of Incorporation, it lends credibility to the organization and creates an easily identifiable structure. This makes the application process for the IRS, banks, insurance companies and other licensing authorities much easier.

### **Incorporating Not-For-Profit Organizations**

Incorporating not-for-profit organizations is a relatively simple six-step process in Illinois.

1. Select your charitable purpose.
2. Select a name for the corporation that fairly identifies its purpose. Select two alternative names, in the event that organization's first choice is unavailable.
3. Contact the Secretary of State, Business Services Department, located in Springfield or Chicago and request a name availability check on the organization's first choice name and, if necessary, the alternatives.
4. Ask to be transferred to the Corporate Information Department. Ask the Department to send you "A Guide For Organizing Not-For-Profit Corporations" and the necessary forms for incorporation.
5. You should receive the Guide and a blank form entitled "Articles of Incorporation." The Articles of Incorporation are sometimes referred to as a charter. The Articles of Incorporation will require the following information:

Article 1: Requests the name of the corporation.

Article 2: Requests the name and address of the registered agent (any person willing to accept service on behalf of the corporation).

Article 3: Requests the name and address of not less than three (3) directors.

Article 4: Requests the corporation's purpose for which it is organized. Most charitable organizations refer to this as their mission statement.

6. The completed Articles of Incorporation and a \$50 filing fee must be sent to the Secretary of State in Springfield. Once the Articles are filed, the Secretary of State should forward a Certificate of Incorporation. The Certificate and the Articles of Incorporation must be filed with the Recorder of Deeds in the county of the registered office.

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## Bylaws

Formal bylaws for the organization are not required by any of the various agencies regulating charitable organizations. However, no charitable organization should be without them. These are the rules that govern the structure of the organization. They are the road map to the organization's policies and procedures. Moreover, the IRS requires exempt organizations to adopt non-discriminatory policies. These can be achieved or adopted by special resolution of the organization, but it is easier, more expeditious and prudent to have such a policy statement embodied in the bylaws of the organization.

Your law library should provide an excellent resource of form books containing adequate bylaws. If not, similar organizations will most likely be the next best resource.

### Applying For Tax-Exempt Status

The process of applying for tax-exempt status with the IRS disproves the last of The Three Great Lies (1. The check is in the mail; 2. I will respect you in the morning; 3. I am from the government. I am here to help you.)

The IRS is really quite helpful in providing all the information and forms necessary to apply for tax-exempt status. Simply telephone 1-800-829-FORM for free publications and forms, or contact your local IRS office.

All you need to apply is: 1. The organization's enabling document: Articles of Incorporation, a Constitution, Articles of Association, the Trust Indenture, and Bylaws for the same; 2. An Application for an Employer Identification Number. Even if the organization will not employ anyone, it must have a Federal Employer Identification Number; 3. Lots of coffee and patience. The lengthy forms and publications provided by the IRS are self-explanatory, but somewhat convoluted. The fee for application ranges between \$150 to \$500.

After you have submitted the completed application and the appropriate fee, the IRS will issue a ruling and determination letter. Like your tax return check, it seems to take forever to arrive. If the IRS needs additional information, or you did not file the form properly, they will tell you.

## CHILDREN'S CHARITIES OF CHICAGO

Children's Charities of Chicago is a not-for-profit corporation dedicated to raising money for the cure and prevention of childhood diseases. Founded in 1985 by a group of friends at DePaul College of Law, Children's Charities is committed to the notion that social events can be both fun and productive.

On June 12, Children's Charities is sponsoring its benefit at the Cafe Brauer in Lincoln Park for the Columbus-Maryville Children's Reception Center. Columbus-Maryville treats cocaine-addicted babies. For more information about this summer's benefit, contact Patrick Dowd, Event Co-Chairperson at (312) 704-4400.

You may appeal if you receive an adverse determination letter. Appeals must be submitted to the District Director within 30 days of the adverse determination letter.

In Illinois, charitable organizations must register with the Illinois Attorney General, Charitable Trust Division. Registration information and forms are available in the Chicago and Springfield offices.

Even if the organization achieves tax-exempt status, it must file an annual return with the IRS unless the organization's gross receipts are less than \$25,000. Even if the gross receipts are under \$25,000, a return should be prepared and filed for accurate record-keeping purposes. Moreover, the Illinois Attorney General requires a charitable organization to file a copy of IRS Form 990, unless its gross receipts are less than \$10,000. If the organization's gross receipts are less than \$10,000, the Illinois Attorney General requires the organization to file an affidavit stating such.

If the organization achieves tax-exempt status with the IRS, it is automatically entitled to tax-exempt status with the Illinois Department of Revenue and is not required to file a return. The charitable organization should, however, apply to the Illinois Department of Revenue for an exemption from state sales tax. Simply telephone the Illinois Department of Revenue at 1-800-732-8866 and request the information pertaining to the application process. The application

process basically requires providing the Illinois Department of Revenue with a copy of the organization's Certificate of Incorporation, Articles of Incorporation and a copy of the IRS determination letter granting the organization tax-exempt status.

### Tax Deductibility

Finally, the Commissioner of the Internal Revenue Service has sought to enlist the help of charities in accurately informing taxpayers about the deductibility of payments by patrons for fundraising events. Contrary to popular belief, not all donations are tax-deductible. For example, if a charity sponsors a benefit dance including a dinner and charges a \$25 "donation" for admission, the purchase price of the ticket probably represents the fair market value of the event, and there really has been no charitable contribution for tax deductibility purposes. There must be a gift made by the taxpayer — a payment of money or a transfer of property without adequate consideration. Care should be taken by the charitable organization in insuring that its fundraising and marketing information does not promise what it cannot deliver.

Armed with the information provided in this article, you should be able to adequately counsel your client through the incorporation and application for tax-exempt status and additional regulatory compliance matters with relative ease and minimal legwork. ♦