



Non-Profit Organizations, Ohio Law, and the Internal Revenue Code

The relationship and interaction between Ohio law governing not-for-profit organizations and the Internal Revenue Code provisions governing tax-exempt and charitable organizations can be confusing and often misunderstood. Many people assume that one necessarily means the other, which is not the case.

Establishing a Non-profit

The Ohio Revised Code sets forth rules for establishing and operating a not-for-profit corporation under Ohio law. The linchpin of not-for-profit status in Ohio is that the "net earnings" of the corporation may not be distributed or used for the benefit of private individuals (or privately-owned entities). In other words, the corporation's "earnings" may be used only in furtherance of its non-profit purposes. Likewise, any payment of compensation for services rendered to the organization (e.g., to employees) must be "reasonable."

Ohio law also specifies whether the stated purpose of a non-profit corporation qualifies as "charitable." For example, a non-profit operating a local public food pantry would be considered "charitable," but the high school baseball booster club likely would not. Although they are both non-profit and tax-exempt, the "charitable" distinction is important. Most non-profit organizations must register with the Ohio Attorney General's Office, and those that qualify as "charitable" must also file an Annual Report (and pay the accompanying fee).

Non-profit corporations are also distinguished by whether or not the organization has "members." That high school baseball team booster club from the previous example likely has players' parents and other supporters of the program as its "members," who elect or appoint officers (president, secretary,

treasurer, etc.) to operate the organization. Many non-profit organizations, however, have no members. And instead, they are governed and operated by a Board of Directors or Trustees. Those individuals who serve on the Board or as Officers of a non-profit corporation also owe a fiduciary duty to the entity and therefore assume responsibility for the corporation's compliance with applicable laws.



Tax Exemptions

Most non-profit organizations are tax-exempt under Section 501 of the Internal Revenue Code ("IRC"). However, an organization's status as "non-profit" and "tax-exempt" does not alone allow solicitation or receipt of tax-deductible contributions. Only those organizations which qualify as "charitable," as defined in the IRC, may receive tax-deductible contributions. Those organizations are described by Section 501(c)(3) as religious, charitable, scientific, literary, educational, or engaged in preventing cruelty to children or animals or testing for public safety. Unlike the relatively simple, quick, and inexpensive process of establishing a not-for-profit

corporation under Ohio law, obtaining "charitable" status from the IRS is considerably more involved.

Obtaining Charitable Status

It begins with the filing of IRS Form 1023 (which totals more than 25 pages in length). It requires exceptionally detailed information and documentation regarding the organization, its purpose, personnel, operation, and finances. In addition, the organization must declare whether it is a "public" or "private" charity, which affects how it must operate. Applying almost always results in requests from the IRS for additional information and documents. From filing to obtaining approval, the process often takes 9 – 12 months or more (although generally, support is retroactive to the time of application).

Non-profits serve many purposes and provide many benefits. But starting or operating a non-profit requires its leadership to be more than just passionate about a 'mission.' It also requires people knowledgeable in various disciplines, such as accounting and legal. Our business attorneys represent non-profit entities of all shapes and sizes. Don't hesitate to contact one of us if you have any questions.