Navigating Nonprofit Start-Up

“Power Tools for Coalitions”
Webinar Series
March 26, 2014

“Power Tools” Background

Moderator:

☐ Kinkini Banerjee, Coalitions Relations Manager, USBC

New series of bi-monthly webinars, part of USBC’s training, technical assistance, and capacity building support for network of state, territorial, tribal, and community breastfeeding coalitions across U.S.
Webinar Access

- Open to all interested breastfeeding coalition leaders and members, and others involved in forming or leading nonprofits in the breastfeeding field.
- Webinar announcement emails are sent through USBC's Coalitions Announcement List. Join at [www.usbreastfeeding.org/signup](http://www.usbreastfeeding.org/signup)
- All sessions will be recorded and archived.

Webinar Materials

Webinar details and registration, and slides/handouts and recordings of past sessions can be found on the website by:

- Clicking the link from your webinar confirmation e-mail
- Going to the Power Tools web page: [www.usbreastfeeding.org/power-tools](http://www.usbreastfeeding.org/power-tools)
Q&A

☐ During today's sessions, all attendees will be in listen only mode.

☐ Questions may be submitted at any time during the webinar. Please type your questions into the Questions box on your webinar control panel.

Webinar Control Panel
Today’s Webinar

Presenter:
Megan Renner
Executive Director
U.S. Breastfeeding Committee

Topic:
Navigating Nonprofit Start-Up
What has led to this moment? Why are we exploring this topic?

SETTING THE CONTEXT

Coalitions in Action
Objectives of this Webinar

- Filing articles of incorporation with your state.
- Applying for exempt status with the Internal Revenue Service (IRS).
- Registering with state(s) to fundraise.

Key Terms & Distinctions

Nonprofit Status ≠ Tax Exempt Status

- Closely related, but different processes
- Done at different times
- Done by different government agencies
  - Nonprofit status is granted by the state
  - Tax-exempt designation, e.g., 501(c)(3), is granted by the federal government, specifically the Internal Revenue Service (IRS)
Attendee Poll

What is your organization’s current status:

a. Informal, unincorporated
b. Incorporated in state, but not yet granted IRS tax exemption
c. Incorporated in state *and* granted IRS tax exemption
d. Not sure

What is a nonprofit?

Any organization for which those who control or support it do not earn a profit.

**Myth: Nonprofits can’t earn a profit.**

- Nonprofits can earn a profit from goods or services it produces
- Nonprofits can invest in stock market
So what’s the difference?

Any organization for which *those who control or support it* do not earn a profit.

- *All money made must go back into organization* – there is no "profit sharing" among members (no “owners” or “shareholders”)
- Special rules around what happens to organization’s assets if nonprofit dissolves
- Term “not-for-profit”: can make a profit to help stay in business, but profit is not reason for being

Becoming a Corporation

- Most common choice
- Must be structured according to *your specific state law*, but universally this includes:
  - Organizing document that creates the organization: articles of incorporation (AoI) or charter [*Constitution*]
  - Rules of operation: bylaws [*legislation*]
  - Policies [*implementing rules/regulations*]
Advantages

- Perception/comfort: people are familiar with corporations; perceived as dependable
- Need to contract directly with the state
- State laws (usually) limit liability of members
- Can get state tax exemptions (e.g., sales tax)
- Gateway to federal tax exempt status, which means many more benefits:
  - Access to foundation grants
  - Can solicit tax-deductible contributions

Disadvantages

- Creates another level of complexity, responsibility, and regulation (e.g., filing report to state, usually annual or biannual)
- Takes time and money
  - Filing fee to state
  - Annual/biannual report fee to state

For a group in the very beginning stages, may not be necessary...focus on work first!
What if we don’t incorporate?

An *unincorporated organization* is much like a corporation, often with similar bylaws and purposes. Differences include:

- Constitution or other policies may take the place of the AoI
- No protection against personal liability
- Much less reporting to the state

Still a nonprofit in practice even if law does not recognize it.

Becoming Tax Exempt

Organizations exempt from federal taxes are described in sections in the U.S. Tax Code.

Best-known type: 501(c)(3), charitable tax exemption:

- allows exemption from federal corporate and income taxes for most types of revenue
- able to solicit tax deductible contributions
- most appropriate for breastfeeding coalitions, so (unless indicated otherwise) the terms “tax-exempt” and “501(c)(3)” will be used interchangeably for the remainder of webinar
A 501(c)(3) organization is organized and operated exclusively for one or more of the following purposes.

- Religious
- **Charitable**
- **Scientific**
- Testing for public safety
- Literary
- **Educational**
  - Fostering national/international amateur sports competition
- The prevention of cruelty to children or animals

**Other Types**

- **501(c)(6):** Business League, e.g., Trade Associations or Professional Associations
  - A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.
  - To be exempt, a business league's activities must be devoted to improving business conditions of one or more “lines of business” (either an entire industry or to all components of an industry within a geographic area).

Find more info on the 26 total types of exemptions: http://www.irs.gov/Charities-&-Non-Profits/
Other Ways

**Automatic Recognition:** the following are automatically recognized as having 501(c)(3) status; they don't need to file:

- Subordinate organizations that are evaluated by parent groups, or are covered by a group exemption
- Churches, parts of churches, or associations of churches
- Organizations that are not private foundations and normally have gross receipts of not more than $5,000

**Fiscal Conduit:** an organization that is already incorporated and tax-exempt that administers funds and performs other administrative tasks for your group:

- Also known as: “fiscal sponsor”, “lead agency”

Advantages

- Freed from many taxes
- Donors can make tax-deductible contributions
- Can apply for grant funds directly: almost all foundation or government grants require evidence of 501(c)(3) status
- Independence from potential control of fiscal sponsors
- Freedom from any fees charged by fiscal sponsors
Disadvantages

- Creates another level of complexity, responsibility, and regulation (e.g., annual tax return to IRS - Form 990 Series)
- Takes time and money
  - Filing fee for federal tax exemption
  - Fees for legal advisors
  - Fees for accounting, tax advisors
- Limits certain lobbying and advocacy activities

For a group in the very beginning stages, may not be necessary...focus on work first!

When to Consider Formalizing

- Your group has proven its worth through a track record of specific accomplishments
- Your group, esp. its leaders, are committed to staying in existence for foreseeable future
- Your group plans to be applying for grants on a regular basis, or you will be selling a significant amount of goods/services
- No suitable fiscal conduit is available
So how do we get started?
NUTS AND BOLTS OF INCORPORATING

Research First

Procedures for becoming an official nonprofit organization vary greatly from state to state.

- Contact the Secretary of State's or Attorney General’s office to learn your state’s procedures: Directory of State Nonprofit Filing Offices
- Typically the “Division of Corporations” (division name may include the word “business” instead)
- Look for FAQs, Forms, guides or manuals
- Call them! They are there to help guide you...
Filing for Incorporation

- Form to fill out and submit to the state with your “organizing document” and a small filing fee
- Organizing document is typically called “Articles of Incorporation”; sometimes “certificate” or “charter”
- Beware of filling out a form *only* - this may seem simpler, but the state’s form may not include language needed later for IRS tax exemption. The IRS requires certain language in the “organizing document”: 1) Purpose clause and 2) Dissolution clause. See IRS Form 1023 Instructions, Part III.

What’s in the AoI

- Organization name: typically a searchable directory to ensure the name is not already used in your state
- Address where organization will be headquartered
- Purpose clause: ensure includes IRS-required language (if intend to seek tax exempt status); state goals broadly to provide future program flexibility
- Dissolution clause, plan for distribution of assets (see IRS requirements if intend to seek tax exempt status)
- Amendment clause: procedure for amending AoI
Governing Document Hierarchy

- Organizational governing documents may not be inconsistent with state law.
- In order of hierarchy, state law prevails, followed by the AoI, bylaws, and any board-approved governance policies or procedures.
- Each document on lower rung must be fully consistent and compliant with those above.
- If not consistent, higher rung prevails.

Aoi Considerations

- Be sure to thoroughly read your state law section re: what nonprofit AoI must include
- Recommend no more detail than required
  - If include extra detail in AoI, and later want to remove or change, have to amend the AoI (following your own amendment procedure *and* by filing amendment and paying fees to state).
  - Amending governing details in your bylaws does *not* require filing amendment or paying fees to state.
  - If extra detail in AoI conflicts with details in your bylaws later, the AoI overrides.
Registered Agent

- Corporations must appoint a registered agent with a business address (not a PO Box) within the state.
- A registered agent receives important legal and tax documents on behalf of the corporation, e.g.,:
  - services of process (SOP) when corporation is party in a legal action, like a lawsuit or summons
  - paperwork from the state for the annual/biannual report/renewal
- Either an individual or a business (like a lawyer or service company) can act as a registered agent.

Ongoing

- Be sure you understand the state's ongoing requirements for reporting and renewal

**Topic for May “Power Tools” webinar**
Now how do we apply for federal tax exempt status?

NUTS AND BOLTS OF FILING FOR TAX EXEMPT STATUS

Obtaining your EIN

To open one or more bank accounts in the name of the organization (and to file Form 990 with the IRS after each fiscal year), you will need to obtain an employer identification number (EIN), also called a federal tax identification number.

- No filing fee
- File online and get EIN immediately

Common misconception: This is not the same as your federal tax exemption!!
Research First

- Take the 17-minute IRS Online Mini-Course: *Applying for Tax Exemption: An Overview*
- See Publication 557, *Tax-Exempt Status for Your Organization*
- See Publication 4220, *Applying for 501(c)(3) Tax-Exempt Status*
- Review Form 1023 and Instructions

**IRS Webpage with Form & Publication Links**

Organizing Document Requirements

To qualify for exemption, the organizing document must:

- Limit organization’s purposes to one or more of those set forth in section 501(c)(3)
- Not expressly empower activities not in furtherance of these purposes
- Permanently dedicate assets of organization to an exempt purpose described in section 501(c)(3)
Form 1023

- File complete form
- Filing fee
  - If average annual gross receipts ≥ $10,000 annually over a 4-year period = $850
  - If gross receipts ≤ $10,000 annually over a 4-year period = $400
- Generally, organizations required to apply for recognition of exemption must apply within 27 months from date of formation to be treated as exempt from date formed.

What Happens Next

- See “Where’s My Exemption Application”
- Keep your “IRS determination letter” in your organization’s permanent records. (Good idea to scan a copy as well!)
Getting Help

How can a developing organization afford professional legal or accounting services?

- Look for professionals who will either donate their time or do the work at a reduced cost.
- Legal Aid organization in your town should have a list of lawyers willing to do pro bono work.
- Other resources:
  - Foundation Center Directory of Nonprofit Startup Resources by State
  - Pro Bono Partnership

Responsibilities

- Recordkeeping requirements
- Annual filing requirements
- Disclosure requirements

See online training courses at www.stayexempt.org

See Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities
What do we need to do before we solicit donations?

**STATE CHARITABLE SOLICITATION REGISTRATION**

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**State Charitable Solicitation**

States have laws regulating solicitation of funds:

- Registration before soliciting contributions
- Additional requirements when activities involve paid solicitors or fundraising counsel
- Filing financial reports

Check with your state for requirements: see [NASCO list of state offices](https://www.nasco.org) that regulate charitable organizations and solicitations.
Form 990 Requirements

<table>
<thead>
<tr>
<th>2010 Tax Year and later (Filed in 2011 and later)</th>
<th>Form to File</th>
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</thead>
<tbody>
<tr>
<td>Gross receipts normally ≤ $50,000</td>
<td>990-N (e-Postcard)</td>
</tr>
<tr>
<td>Gross receipts &lt; $200,000, and</td>
<td>990-EZ or 990</td>
</tr>
<tr>
<td>Total assets &lt; $500,000</td>
<td></td>
</tr>
<tr>
<td>Gross receipts ≥ $200,000, or</td>
<td>990</td>
</tr>
<tr>
<td>Total assets ≥ $500,000</td>
<td></td>
</tr>
</tbody>
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Important Note: Even if your organization has never applied for tax exempt status, once incorporated as an official organization you are still required to file at least a 990-N. Only churches and some other very special categories are exempt from this!!

Form 990-N (e-Postcard)

- The e-Postcard is due annually by the 15th day of 5th month after close of fiscal year.
- **For most w/ Dec. 31 year-end = May 15**
- If you do not file on time, IRS may send reminder notice, but no late penalty
- If fail to file for three consecutive years, automatically lose tax-exempt status
- If not yet applied for tax exemption or application pending, officer should call 877-829-5500 and ask that to be set up to allow filing of the e-Postcard
What does 990-N ask?

- Organization’s legal name and mailing address
- Employer identification number (EIN) – if don’t have one yet, you need it to file 990-N
- Name and address of a principal officer
- Organization’s annual tax year
- Answers to the following questions:
  - Are gross receipts still normally $50,000 or less?
  - Has organization terminated or gone out of business?

[IRS webpage with filing links and FAQs link]

Other Resources

- National Council of Nonprofits
- GrantSpace Knowledge Base (from the Foundation Center)
Questions?

Upcoming Partner Webinar

April 17, 2014 - 2 p.m. ET

Ask the Expert: Everything You Wanted to Know about Nonprofit Tax Law

Presenter: Jeffrey S. Tenenbaum, Esq., Partner and Chair of the Nonprofit Organizations Practice, Venable, LLP

Register online
Venable Resources

View/listen to recordings of prior nonprofit legal webinars, including:

- Drafting and Revising Nonprofit Bylaws: Common Pitfalls and Best Practices
- Work & Family: What Nonprofit Employers Should Know about Family-Oriented Employment Laws (includes breastfeeding!)
- Keeping Up with Technology and the Law: What Your Nonprofit Should Know about Apps, the Cloud, Information Security, and Electronic Contracting

Sign up to receive articles, alerts and event invitations from Venable's Nonprofit Organizations practice group

Upcoming “Power Tools” Webinars

Nuts and Bolts of Nonprofit Maintenance
Wednesday, May 14 • 2:00-3:30 pm ET
- key info & resources to stay in compliance with filings and reports required by state government agencies and the IRS

Advocacy and Lobbying for Nonprofits
Wednesday, July 16 • 2:00-3:30 pm ET
- principles and best practices nonprofits need to know to stay within the IRS lobbying parameters (just in time for National Breastfeeding Month activities in August)
Future “Power Tools”
Topics

Coming in September & November:

- Grantseeking Basics w/ the Foundation Center
- Strategic Communications (website, eblasts or list servs, e-news, blogs, social media)

2015 Webinars:

- Please tell us what topics you’d like to see on the evaluation survey you receive after this session!

2014 Coalitions Conference

- Dates: August 2-4, 2014
- Location: Crystal Gateway Marriott, Arlington, VA
- New Name: Fifth National Breastfeeding Coalitions Conference
- Exhibitor/Sponsor Prospectus posting today; Call for Proposals launching later this week

www.usbreastfeeding.org/2014-nbcc
2014 Day of Action

- Monday, August 4: after conference ends
- Everyone can attend: regardless of your job!
- Boxed lunch, busses, training/briefing and leave-behind materials provided

For Individuals: National WIC Association: Advocacy vs. Lobbying
For Coalitions: American Bar Association: Nonprofits & Lobbying: Yes, They Can!
USBC Breastfeeding Advocacy HQ: www.usbreastfeeding.org/advocacy

Thank you for all you do!

Action 20. Improve national leadership on the promotion and support of breastfeeding.

- Create a federal interagency work group on breastfeeding.
- Increase the capacity of the USBC and affiliated state coalitions to support breastfeeding.