Nuts and Bolts of Nonprofit Maintenance

“Power Tools for Coalitions”
Webinar Series
May 22, 2014

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.
- 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
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.
Technical Issues

Audio problems? Other technical questions?

Please e-mail: office@usbreastfeeding.org

Today’s Webinar

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

Topic:
Nuts and Bolts of Nonprofit Maintenance
Why are we exploring this topic?

COMPLIANCE OVERVIEW

Objectives of this Webinar

- Understanding internal & external compliance requirements for nonprofits:
  - with your state of incorporation, and
  - with the Internal Revenue Service.
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)

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]
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

Compliance Requirements

- After incorporating, prepare for ongoing compliance requirements expected by your state.
- Also prepare for compliance requirements expected by the IRS, even before you (and even if you never) file for IRS tax exempt status!
- Failing to regularly meet ongoing requirements in a timely manner can have consequences...
- Two categories of compliance requirements: internal and external.
What are the requirements imposed by the state?

NUTS & BOLTS OF STATE COMPLIANCE

Internal Requirements

Actions that must be taken within the corporation by the directors (a.k.a. Board) or members, respectively:

- most commonly overlooked...
- but must be documented as part of organizational records
- may need to present these records when dissolving/merging the organization, or in the event of a lawsuit
Internal: What’s Typical

- Be familiar with your state’s nonprofit law, and ensure your governing documents and practices are in compliance with it (see previous webinar)
- Annual membership meeting and board meetings: make sure meeting both state law minimums *and* your own bylaws (including notice requirements)
- Make sure adopting/maintaining updated bylaws
- Make sure maintaining minutes for all membership and board meetings
- Disclaimer: not exhaustive list. DO check state law!!

External Requirements

- Imposed by state in which incorporated and by any state where registered to transact business (in non-incorporated state typically called “foreign corporation”)
- e.g., USBC is incorporated in FL, headquartered in DC, meets in VA (sales tax exemption), has employees in others...required to meet certain requirements for each
- Requirements may be less or different for “foreign” corporations
External: What’s Typical

- Most states require annual state filing, called the annual report or statement; some require biennial report (e.g., DC = Two Year Report)
- A few states (e.g., CA and NV) also require initial reports/statements to be filed and fees to be paid within the months following incorporation
- Many states require Charitable Solicitation Registration before soliciting contributions (or when annual contribution amount exceeds a ceiling) and/or when activities involve paid solicitors or fundraising counsel

Consequences

Two primary scenarios for non-compliance:

1. **Bad standing**
2. **Piercing the corporate veil**
Bad Standing

Not meeting annual report obligations in timely manner causes “bad standing” w/ the state. Consequences may include:

- Late fees, reinstatement fees
- Revocation of corporate status
- Administrative dissolution by the state

Piercing the Corporate Veil

- If sued and unable to show met all corporate formalities and state requirements, judge can rule corporation has been acting more like a sole proprietorship or general partnership. This can result in “piercing the corporate veil”, meaning that limited liability protection disappears and individual directors’ assets are vulnerable if lawsuit judgment is made against organization.

- Must show separation between directors (Board) and organization: maintaining business bank account, transacting business under organization name, and satisfying all ongoing formalities, such as holding annual meetings, are steps that must be taken to protect the entity status.
NUTS & BOLTS OF STATE ANNUAL REPORTS

Overview

- Allows states to track formed or qualified corporations
- Usually a corresponding fee ranging from $10 to $300 or more
- Some states connect due dates to anniversary of incorporation; others set a particular due date for all corporations in the state
Research First

Procedures for reports vary from state to state:

- Once you are incorporated, you should receive notices reminding you, by mail or e-mail
- 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...

What’s in Annual Report?

More and more these are filed online...simply just confirming/updating key info:

- organization ID number
- business and mailing addresses
- registered agent (changing this may also require a separate form)
- Board officers & directors names and contact info
- purpose statement

Note: Changing organization’s official name and amending articles of incorporation typically require separate forms...
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.

NUTS & BOLTS OF STATE CHARITABLE SOLICITATION REGISTRATION
Overview

States have laws regulating solicitation of funds:

- Allows states to track solicitation of charitable contributions from the general public
- Comprehensive reporting by nonprofits and by outside fundraising firms/consultants they employ
- Compliance reporting divided into two pieces:
  - registration, provides initial base of data and information about organization's finances and governance
  - annual financial reporting, keeps state apprised about organization's operations w/ emphasis on fundraising results and practices

Who has to do it?

- Generally, any nonprofit conducting a charitable solicitation within the borders of a state, by any means, is subject to state’s law and is therefore required to register (and must do so before soliciting)
- Internet fundraising gets fuzzy = see the NASCO Charleston Principles
Who is excluded?

Patchwork of exclusions from coverage...product of each state's constitutional and political considerations:

- every state grants an exemption (or exclusion) to “religious organizations”
- most have exemptions for colleges and universities
- most have exemptions for organizations raising only small amounts (e.g., under $5,000)

The Appendix of the Unified Registration Statement has details on each state’s exemptions, but confirm with your state as the laws are often tweaked...

Research First

Procedures for reports vary from state to state:

- Usually corresponding fee for registration & annual filing, ranging from $10 to $325 (higher fees are on sliding scales based on revenue)
- Most have set deadline of May 15 or June 30 each year (i.e., 4 ½ or 6 months after fiscal year end)
- Check with state for requirements: see NASCO list of state offices that regulate charitable solicitations
- Once you do initial registration, should receive notices reminding you, by mail or e-mail
### What’s in the Form?

- Key organizational info: EIN, contact info, etc.
- Questions about past legal action against the organization, prior/other registrations
- Questions about solicitation methods & practices
- Description of purpose/programs for which funds are solicited
- Names/contact info for officers, directors, principal salaried executives; questions about conflicts of interest and criminal history of these individuals
- Questions about financial practices

### Other Submissions

- Financial report data, such as total contributions, total expense, and breakdown of program service expenses, management & general expenses, fundraising expenses, etc.
- Initial registration typically requires attachment of:
  - Articles of Incorporation
  - Bylaws
  - IRS Determination Letter (if tax exempt)
- Most initial registrations & annual filings require attachment of IRS 990
Consequences

- Many nonprofits have not done the necessary legal homework before launching fundraising campaigns.
- If this is you, you should be concerned. BUT you should not be deterred from going ahead with registration.
- States generally wish to encourage honest efforts to comply...organizations able to demonstrate good faith by promptly registering after discovering the obligation stand a good chance of avoiding or minimizing sanctions.

The bottom line: registration is the law and you must comply as soon as possible.

What are the requirements imposed by the IRS?

NUTS & BOLTS OF IRS COMPLIANCE
IRS Requirements

- 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

Recordkeeping

In general, nonprofits must maintain books/records to show compliance with tax rules, including:

- **Program evaluation**: records to evaluate success of activities and whether achieving desired results
- **Budgetary monitoring**: board should approve annual budget, income & expenses should be monitored to ensure operating within budget
- **Financial statements**: records must support income, expenses, and credits reported on 990
Recordkeeping (continued)

- **Identification of sources of receipts (revenue):** maintain a list of donors and grantors and amounts (or a description of noncash contributions) received
- **Grants to individuals:** adequate records and case histories to demonstrate that grants serve charitable purposes; case histories w/ names, addresses, purposes of grants, manner of selection, and relationship (if any) that recipient has with any members, officers, trustees, or donors

Recordkeeping Considerations

- Organizational transactions will generate supporting documents, e.g., grant applications and awards, sales slips, paid bills, invoices, receipts, deposit slips, and canceled checks.
- It is important to keep these “backup” documents because they support the entries in financial statements and on tax and information returns.
- Organize them by year and type; keep in a safe place.
- Books and records must be available for inspection by the IRS.
Annual Filing (Form 990)

<table>
<thead>
<tr>
<th>2010 Tax Year and later (Filed in 2011 and later)</th>
<th>Form to File</th>
</tr>
</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 Total assets &lt; $500,000</td>
<td>990-EZ or 990</td>
</tr>
<tr>
<td>Gross receipts ≥ $200,000, or Total assets ≥ $500,000</td>
<td>990</td>
</tr>
</tbody>
</table>


**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 account be set up to allow filing of 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]

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.
- Talk to other local nonprofits for referrals
- Other resources:
  - [Foundation Center Directory of Nonprofit Startup Resources by State]
  - [Pro Bono Partnership]
Disclosure: Public Inspection of Filings

Nonprofits must make the following available for public inspection and copying upon request and without charge (except for a reasonable charge for copying):

- IRS exemption application, all attachments, and the ruling letter issued by IRS
- Annual Information Return (Form 990 series), with the exception of list of contributors on Schedule B
- Form 990-T, Unrelated Business Income Tax Return (if applicable)

Disclosure: Sale of Free Government Info

If a public charity offers to sell, or solicits money for, specific information or a routine service that is available free from the federal government, the organization must make an express statement at the time of solicitation about the free service. An organization that intentionally disregards this requirement is subject to a penalty.
Disclosure: Charitable Contributions

- **Donor Recordkeeping:** cannot claim tax deduction for monetary contribution unless donor maintains record of contribution in the form of either a bank record (e.g., cancelled check) or written communication from charity showing name of charity, date, and amount.

- **Donor Substantiation:** cannot claim tax deduction for any single contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgment from the recipient charity.

Acknowledging Charitable Contributions

- Recommend to assist donor by providing a timely written statement showing name of charity, date and amount of any cash contribution, and description of any non-cash contributions.

- In addition, acknowledgment should indicate whether any goods or services were provided in return for the contribution.

- Letters, postcards, or computer-generated forms are acceptable: either sent as paper copy or an electronic acknowledgment, such as an e-mail.
Quid Pro Quo Contributions

- If any goods or services were provided in return for a contribution, the organization should provide a description and good faith estimate of the value of such goods or services.

- Language used to acknowledge “free gift” provided with holiday donations:

  *USBC is a 501(c)3 nonprofit organization, and your contribution is tax deductible to the extent allowed by law. If you ordered one or more items, your donation is tax deductible less the fair market value of $2.50 per 13” x 19” poster and $1.00 per 5” x 7” postcard.*

Other Resources

- **National Council of Nonprofits**
- **GrantSpace Knowledge Base** (from the Foundation Center)
- **National Association of State Charity Officials**
Questions?

Venable Resources

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

- Ask the Expert: Everything You Wanted to Know about Nonprofit Tax Law
- Drafting and Revising Nonprofit Bylaws: Common Pitfalls and Best Practices
- Work & Family: What Nonprofit Employers Should Know about Family-Oriented Employment Laws (includes breastfeeding!)

Sign up to receive articles, alerts and event invitations from Venable's Nonprofit Organizations practice group
Upcoming “Power Tools” Webinars

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!
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 Individuels: 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.