



Society Strategies

Federation of Genealogical Societies

P.O. Box 200940 Austin TX 78720-0940

Series Set IV Number 3

September 2001

Set IV Strategies for Treasurers

Incorporation and IRS Regulations Clarifying United States Non Profit and Tax Exempt Status

by Nancy J. Emmert, CG

Supplemental Page

This strategy paper, written some years ago, is an FGS *Classic* that contains ideas and strategies still relevant today in society management.

This paper discusses society incorporation, the pros and cons of organizing as a nonprofit corporation, and how understanding the IRS codes protect you and your society.

The information on page 4 which directs the interested person on how to obtain copies of this paper is incorrect.

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The FGS Society Strategy Series consists of papers which offer suggestions and instructions for innovative and effective management for genealogical and historical societies. The Federation holds a copyright to this material. A list of sets and ordering information appears at the end.

Set IV Strategies for Treasurers Incorporation and IRS Regulations Clarifying United States Non Profit and Tax Exempt Status

by Nancy J. Emmert, C.G.

INTRODUCTION

Most people who become leaders in a genealogical society do so because they believe in the goals and programs of the organization and are willing to volunteer time and talent. Usually, their talents do not include knowledge about the Internal Revenue Service requirements for managing a nonprofit organization. However, learning even a few basic regulations will help both the volunteer and the organization avoid potential problems.

Decision-makers within an organization should first weigh the advantages and disadvantages of a nonprofit corporation.

INCORPORATION

Corporation: An association of individuals incorporated under the authority of state law.

Nonprofit Tax-Exempt Corporation: A corporation organized for nonprofit activity, with purposes that qualify it for exemption from paying federal corporate income taxes.

ADVANTAGES OF A NONPROFIT CORPORATION

- Lawsuits can be filed only against the assets of the organizations, not against the property of those who manage or belong to the organization.
- Incorporation protects the individual members from liability for acts performed in behalf of the corporation. If an accident occurs at a meeting or workshop, the individual members of the incorporated society will be exempt from litigations. This protection of the individual members is in itself worth the effort required to incorporate.
- An application can be filed with the Internal Revenue Service for tax-exempt status. Contributors to a nonprofit corporation with tax-exempt status may be able to deduct donations on their income tax returns (but this is true only if they itemize). This can be an important aspect to fund-raising.

Incorporation and IRS Regulations

- Most foundations and government agencies require that a society applying for funding or grants for establishment of a library or museum be a nonprofit tax-exempt corporation. The organization should be incorporated if it owns a building to house a library, society office, or museum.
- People will more likely join a society that is a nonprofit, tax-exempt corporation because of the limited legal liability. They know that the society's Articles of Incorporation and bylaws conform to state requirements and that the society must maintain proper records, keep its minutes up-to-date, and abide by its bylaws.
- A society's status is increased in the community since other businesses and local government know they are dealing with an organization set up under law.
- A nonprofit society can apply for bulk-rate mailing privileges, allowing it to mail a minimum of 200 pieces of mail at a low rate. Mailing newsletters and quarterlies at bulk-rate will result in a savings over first-class mail rate.

DISADVANTAGES OF A NONPROFIT CORPORATION

- A tax-exempt society may not work for or against a candidate seeking political office.
- A tax-exempt society is limited by federal regulations as to the amount which it can spend on lobbying to influence legislation or public opinion.
- According to law, standards for membership may not discriminate by race or sex. The society does have a right to require certain qualifications for membership, which may include geographical area.

- A society may be taxed on unrelated business income that exceeds \$1000 and is not consistent with the stated tax-exempt purposes of the organization.
- No part of a nonprofit society's earnings can be distributed to its members. Proper expenses of officers and members can be reimbursed providing their activities further the purposes of the society.
- A society may be so small or its activities so limited that there is no need for formal incorporation.
- Dissolution is provided for by the laws of the state in which incorporated. A society should be certain that it is going to be in existence for many years if it incorporates, because the law requires that in the event the society dissolves, its assets must be given to another nonprofit organization.

INCORPORATION CONSIDERATIONS

First, appoint a committee to investigate incorporation. They must consider such things as a proper name, the purposes, and necessary legal assistance. Incorporation is regulated by state law and differs in each. Write to the proper state authority, requesting all information, pamphlets, and sample Articles of Incorporation that are available.

Thoroughly investigate and acquire all necessary papers and information before consulting an attorney to draw up Articles of Incorporation under the "General Not for Profit Corporation Act." (See *Management Handbook: A Guide for the Organization and Management of Genealogical Societies, 2000 Edition* edited by Luebking.¹ See Exhibit #1, Articles of Incorporation, page 67.)

INCORPORATION PROCEDURES:

1. The name of the society must not be similar to another.

Incorporation and IRS Regulations

2. The purpose must be stated in the Articles of Incorporation. To apply for tax exemption later, the society must qualify as a tax-exempt organization.

3. Articles of Incorporation must be signed by the President or the Vice-President and the Secretary, one of whom is designated as the Registered Agent.

4. The Articles of Incorporation should be notarized.

5. The Articles of Incorporation are filed by mail or in person with the proper state office.

REQUIREMENTS

1. The organization must have a specific non-profit purpose as defined by Internal Revenue Service rules and fit into the categories it has established. A genealogical society will usually be classified as an educational organization under Section 501 (c) (3) of the IRS Code.

2. No one individual can benefit from the activities of the organization.

3. Lobbying cannot be a substantial part of the activities of the group.

4. The organization is not allowed to participate in political campaigns.

APPLICATION

A society which wants to apply for tax exempt status must use Form 1023 and pay a users fee. If the annual gross income of the organization is less than \$10,000 over the last four years, the fee is \$150. Otherwise, the fee is \$500. IRS Publication 557, "Tax Exempt Status for Your Organization," details the requirements.

Organizations with less than \$5000 of annual gross income are not required to file a Form

1023. However, if the organization has not filed the Form 1023 and has received a determination letter from the Internal Revenue Service, donations to the organization will not be deductible for income tax purposes.

Two books designed to explain and facilitate the process are *How to Form a Nonprofit Corporation*² and *The Complete Guide to Nonprofit Corporations*.³

STATE REQUIREMENTS

Each state has its own requirements for nonprofit and tax exempt status. Many will accept recognition from the Internal Revenue Service for this status. The publication, *How to Form a Nonprofit Corporation*, provides a state-by-state outline of these requirements.

FORM 990

Societies with average annual gross revenues over \$25,000 are required to file an informational Form 990 with the Internal Revenue Service. This is due by the 15th day of the 5th month after the close of the accounting year. An extension can be requested.

The IRS defines gross revenues as all of the money received in a year. A society which holds a workshop or conference which produces \$25,000 of revenues, even with expenses of an equal amount, will probably be required to file the Form 990 because the amount of expenses are not considered when calculating gross revenue.

UNRELATED INCOME

Another type of income that can create potential problems is "unrelated income." This could occur if your group undertakes a fund raising project that is completely unrelated to your stated purposes.

Incorporation and IRS Regulations

Probably holding a genealogical conference, publishing and selling transcribed records, or designing and marketing forms would not cause a problem. If the fund-raising effort is done entirely by volunteers, again, it will probably not be treated as “unrelated income.”

However, if your fund raising activity—such as selling books which are not related to the purposes of your organization as are the genealogical ones—competes with for-profit business, this could create an “unrelated income” problem. The form 990-T would then be filed and income tax must be paid on the profits.

These basic principles of non-profit and tax exempt status are management lessons all society leaders should know. Understanding and adhering to these regulations is your best insurance against potential problems with the Internal Revenue Service.

NOTES

1. *Management Handbook: A Guide for the Organization and Management of Genealogical Societies, 2000 Edition*. Sandra H. Luebking, editor. (Austin, Texas: FGS, 2000).

2. *How to Form a Nonprofit Corporation, 3rd Edition*. Mancuso, Anthony. (Berkeley, CA: Nolo Press, 1996).

ABOUT THE AUTHOR

Nancy J. Emmert, C.G., holds an MS in accounting and has her own accounting practice which specializes in small businesses and nonprofit. She currently serves as the treasurer for the Federation, is the past president of the Wisconsin State Genealogical Society, and has been the treasurer of several nonprofit organizations.

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