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JULY 28 - AUGUST 3, 2023

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ARE ALL NON-PROFIT BUSINESSES TAX-EXEMPT?

You've long been interested in starting a nonprofit and have finished filing non-profit Articles of Incorporation with your state's Secretary of State. You'll soon receive a certificate from your state showing that your entity is formed and ready to do business. So, you now have a fully-fledged, tax-exempt non-profit corporation, right? Unfortunately, no. A non-profit corporation is not automatically tax-exempt at formation (subject to very few exceptions, such as churches), and there are additional steps you must take to make your non-profit corporation tax-exempt.

UNDERSTANDING NONPROFIT TAX EXEMPTION

Seeking to make your new non-profit organization tax-exempt under Section 501(c)(3) of the Internal Revenue Code is a critical step in forming a non-profit. The advantages of being tax-exempt are numerous. A primary advantage allows organizations that qualify under 501(c)(3) to be exempt from



BY: DREW PINTA

paying corporate income tax at the federal, state, and local levels. These advantages also extend to donors- because contributions to organizations that have received income tax exemption are tax-deductible, donors are more likely to contribute.

For an organization to be tax-exempt under 501(c)(3), it must be organized and operated exclusively for a purpose that is charitable, religious, educational, scientific, literary, or involves testing for public safety, fostering national or international amateur sports competition, or preventing cruelty to children or animals. You will need to make sure the purpose statement included in your Articles of Incorporation falls under one of these categories.

PREPARING YOUR NONPROFIT FOR TAX EXEMPTION

Obtaining the exemption requires some preparation and patience. To save time and money, you want to ensure you have at least

the following complete before applying for exemption:

- Apply for an EIN for your organization
- Ensure the Articles of Incorporation contain the correct language required by the IRS

Once those pieces are in order, you're ready to apply to become tax-exempt. For this, the IRS requires submission of a form 1023 (or the short-form 1023-EZ), which discloses, among other things, the names of your directors and details about your organization's purpose and mission. This form can take months to be processed by the IRS.

COLLECTING DONATIONS FOR YOUR 501(C)3

Fortunately, while your organization's 501(c)(3) tax-exemption application is pending, you can still solicit donations. If your organization ultimately receives its exemption determination letter from the IRS, your organization is deemed exempt retroactive to the date of formation and donations are

retroactively tax-deductible for the donors who contributed them.

Once you receive exemption, you must be careful not to take actions with your organization that would jeopardize your tax-exempt status. For example:

- You cannot operate the organization for the benefit of private interests
- You cannot use the organization to attempt to influence legislation or participate in campaign activity for or against political candidates.

The safest action for any tax-exempt organization is limiting the organization's activities to those aligned with its stated exempt purpose(s).

Starting a tax-exempt nonprofit organization is a potentially lengthy process to manage and has the potential for pitfalls. Working with an experienced attorney can ease your burdens and open you to little-known benefits.

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COURTS FIND REMODELERS ARE SUBJECT TO THE CSPA

Two Ohio appellate courts have found the Consumer Sales Practices Act (CSPA) applies to remodeling projects for homes, rather than the Home Construction Service Suppliers Act (HCSSA). This is critical, because for years remodelers have specifically attempted to have the HCSSA govern their contracts, due to its less harsh nature. Under



BY: JOHN MILLER

the CSPA, suppliers can be subject to triple damages and personal liability. Such penalties are usually unavailable if the HCSSA applies. The CSPA and HCSSA are similarly structured, containing certain contractual requirements and prohibitions on conduct.

The appellate cases turned their decisions on the definition of "construction," which the HCSSA did not specifically

define. The courts decided "construction" inherently meant the creation of something new rather than the repair or improvement of something already existing. Remodeling was specifically pointed out as not being the creation of something new. In part, this makes sense because the HCSSA is primarily applicable to and utilized by new home builders, rather remodelers. Critics of the decisions point out the HCSSA specifically

applies to "work" done on an individual unit in an existing structure, i.e. an apartment; which may be the creation of something new.

Wrong or right, these cases say pure remodeling of a residential structure is governed by the CSPA, opening home remodelers to enhanced liability. This will require contractors to analyze their projects and contracts on a case-by-case basis.

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