

Registry of Interpreters for the Deaf, Inc.
Affiliate Chapter Relations Committee

Affiliate Chapter Handbook
Third Edition
Section 18

Nonprofit Corporation Status and Other Legal Related
Issues: All Hoops and NO Loops!

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Nonprofit Corporation Status and Other Legal Related Issues

Affiliate chapters of the Registry of Interpreters for the Deaf, Inc. are considered to be nonprofit corporations and are considered to hold federal tax-exemption status as long as the affiliate chapters adhere to the requirements delineated by the national corporation. This would include, but is not limited to, the appropriate filing of reports, names and addresses of current officers (kept updated each time there is a change) and the filing of an annual financial statement. Affiliate chapters following this format will use the federal identification number of the national corporation.

Some affiliate chapters may desire to establish their own identity as nonprofit corporations. The following information will give you guidance as to what to expect and outline the benefits to the affiliate chapter. This does not exclude the need to file with the National Office similar records; the affiliate chapters using the national corporation umbrella for their identity must also do so.

Identifying a Nonprofit Corporation

Nonprofit corporations are created for purposes other than generating profit, and are entities in which no part of the income is distributed towards its directors or officers. State law (often modeled after the Non-Profit Corporation Act of 1986) provides the guidelines by which a nonprofit corporation may be formed. Samples of such nonprofit corporations include churches or church associations, schools, charities, medical providers, legal aid entities, volunteer service organizations, professional associations, research institutions, museums and possibly sports associations. Tax-exempt status must be filed at both the federal and state level. Depending upon the state laws, it is possible for a nonprofit corporation to obtain federal tax-exemption and not obtain state tax-exemption.

Forming a Nonprofit Corporation

Step one is the filing of nonprofit Articles of Incorporation with the proper state agency (See Appendix A). The articles need to contain the required clauses that ensure your corporation will qualify for tax-exempt status. It is strongly advised that the Articles of Incorporation and other important documents are stored in a safe place and filed with the National Office.

Once the articles of incorporation are filed, tax-exempt status must be applied for at both the federal and state levels. Federal filing is done with the Internal Revenue Service by filling out Form 1023. Each state will have a particular department responsible for the filing of nonprofit, tax-exempt status.

To obtain the status of nonprofit tax-exempt status, the corporation must comply with corporate formalities of annual meetings of its directors or officers and of its members.

Bylaws must be adopted for the corporation which provide the details as to the process of said meetings.

Valid Purposes for Nonprofit Status

Qualifying for federal tax-exempt status under section 501(c)(3) of the federal tax code, nonprofit corporations must be established and function for some charitable, literary, religious, educational or scientific purpose permitted under the federal code. Nonprofit corporations, other than the purposes previously mentioned, also may be formed under a different section of the federal code and must abide by the qualifications and requirements of that federal tax code section.

Clarification of the categories listed for 501(c)(3) are as follows:

- *Charitable purposes* are defined as providing services beneficial to the public interest.
- *Literary purposes* include writing, publishing and distribution of books, which are directed toward promoting the public interest rather than engaging in commercial book production and marketing.
- *Religious category* refers to the general types of religious organizations and formal institutionalized churches.
- *Educational purposes* are broad yet allow instruction for both self-development and the benefit of the community.
- *Scientific research* that is conducted in the public interest qualifies for tax-exempt status; however, research incidental to commercial or industrial operations will not qualify.

The articles of incorporation must identify the purpose of the nonprofit corporation. Depending on the state of residence, some state laws require the approval of state department(s) prior to the formation of a nonprofit corporation. Fees may be assessed in the filing of incorporation.

Federal Forms for tax-exempt status

Nonprofit corporations desiring to qualify for 501(c)(3) federal tax-exempt status must file IRS application Form 1023 (www.form1023help.com). This application must be filed in a timely manner in order for tax-exemption to be effective retroactively. The application must be postmarked no later than fifteen (15) months after the end of the month when your articles of incorporation were filed within the affiliate chapter's state.

It is possible for the IRS to challenge an affiliate chapter's corporation's tax-exempt status if IRS views the affiliate chapter as not fulfilling the requirements of section 501(c)(3). If such a challenge takes place and the corporation is found as not meeting the requirements, the corporation may be liable for back taxes and tax fines for the period it

operated as a tax-exempt nonprofit corporation. If one has questions, it is advisable to discuss particular situation(s) with an attorney or an accountant.

There are a few groups that do not have to file the IRS Form 1023. Examples of these include:

- A church, interchurch organization, convention of churches, or an integrated auxiliary of a church
- A subordinate organization covered by a group exemption letter (a parent tax-exempt company must submit a letter saying its subsidiary company will be tax-exempt—this applies to many of the RID affiliate chapters)
- A group that qualifies for public charity status and which normally has gross receipts of less than \$5,000 per year

When a nonprofit corporation is ready to fill out IRS Form 1023, one may find assistance at www.form1023help.com. This web site lists advantages and disadvantages from the prospective of the IRS. It provides a summary of the kinds of tax treatment for nonprofit versus for profit corporations, the process IRS uses in the application for tax-exemption, a walk-through process with the Form 1023 and the federal organizational requirements for such status.

What Are the Benefits of Tax-exemption?

If a corporation is granted federal tax-exemption status under section 501(c)(3) of the tax code, the corporation will be exempt from payment of federal corporate income taxes. The rates of such taxes are between 15% and 34%, thus resulting in savings for the corporation.

Nonprofit corporations that obtain tax-exempt status may receive both public and private grants. Individual donors are able to claim a federal income tax deduction of up to 50% of income for donations made to 501(c)(3) groups.

Nonprofit corporations also may receive limited liability protection that for-profit entities receive. This means that directors or trustees, officers, and members are typically not personally responsible for the debts and liabilities of the corporation.

A nonprofit corporation's life is not dependent upon its members; rather, it possesses the feature of unlimited life. Original or charter members may pass on or leave the corporation but the corporation may continue to exist and conduct business.

Nonprofit corporations are able to easily establish retirement funds and qualified retirement plans (e.g. 401k).

Nonprofit corporations may enjoy a lower postal rate for the purpose of bulk mailings.

Are There Any Disadvantages of a Nonprofit Corporation?

Nonprofit corporations experience a large amount of paperwork. Articles of Incorporation must be filed with the state, bylaws prepared and adopted, and meeting minutes of the board of directors and of the membership must be kept with corporation records.

Applications for tax-exempt status must be filed at both the federal and state levels. The corporation must remember that nonprofits cannot be used to generate profits for the directors or officers and the purpose must conform to IRS regulations.

Annual Filing Procedures

Nonprofit corporations receiving tax-exempt status still have the responsibility of filing tax statements/forms. For affiliate chapters that use the tax-exempt status of RID and have not filed separate Articles of Incorporation, please follow the Affiliation Check List. The table in Appendix B shows the forms and who must file.

The Political Campaign Prohibition and Lobbying Activities

The following prohibitions are applicable to affiliate chapters that pay for lobbyist activities. Non-paid individual lobbying activities are not impacted by these prohibitions. Nonprofit corporations that have received an approval determination from the IRS are governed by the IRS code section 501(c)(3) which prohibits certain political activities. The code requires that the organization “does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.” This is considered an absolute prohibition. The seemingly insubstantial or slightest amount of political campaign activity may result in a loss of tax-exempt status.

To be clear, the “absolute prohibition” of activities includes:

- The endorsement of any candidate(s)
- Making donations to any candidate’s campaign
- Engaging in fund raising on behalf of any candidate
- Distributing statements supporting or opposing any political candidate
- Becoming involved in any other activities that may be beneficial or detrimental to any candidate.

Nonprofit corporations must remember that campaign activities include participation or intervention in any political campaign on behalf of, or in opposition to, any candidate for public office. A candidate is any contestant for elected office, and political campaign activities relate to individual candidates. Participation in a campaign includes publishing

or distributing statements made either by a candidate or by someone else directed at a candidate.

Lobbying activities relate to social issues and laws. Participation in this arena is not prohibited. However, be careful not to misstep in this area with the campaign of a candidate who happens to support your cause. The IRS allows for nonprofit corporations to have an insubstantial amount of lobbying or legislative activity. Usually, this means that not more than five percent (5%) of the nonprofit corporation's overall activities, financial expenditures, staff hours and/or other measurable standards may be used towards lobbying or legislative activities. If the nonprofit organization exceeds this guideline, their 501(c)(3) status will be revoked. Revocation may include a 10% tax on the political expenditure and require recovery of the political expenditure. The IRS may also impose 100% tax if the funds are not recovered.

If a nonprofit organization wishes to engage up to twenty percent (20%) towards lobbying or legislative activity, then application must be made by using the IRS form 5768 [the 501(h) election]. Special rules and limitations do apply for such corporations to follow.

It is common for candidates for public office and/or current political office holders who may run for re-election to contact nonprofit corporations to receive endorsements. Endorsements cannot be given under any circumstances.

It is possible for said candidates to contact nonprofit corporations to make presentations or to speak at nonprofit corporation sponsored events or activities, thus giving the implied endorsement of the nonprofit corporation. In so doing, the nonprofit corporation must be careful. The candidate may bring pamphlets or flyers with them to be distributed to the people in attendance, but the presentation must focus solely on the social issues and laws and not on the individual's campaign nor of what the individual would sponsor or not sponsor if elected.

Immunity from Civil Liability

Nonprofit corporations may protect their directors/officers and/or volunteers from damaging civil lawsuits by including limited liability provisions in the Articles of Incorporation. Many nonprofit corporations' Articles of Incorporation are "out-of-date" and may need to be reviewed so that such provisions may be added.

The nonprofit corporation must check with its specific state laws, but most states permit an organization to adopt provisions in its Articles of Incorporation that will eliminate personal liability of directors/officers and/or volunteers (subject to certain exceptions) for certain kinds of risks. Most states provide for legal immunity for the directors/officers and/or volunteers of nonprofit corporations. Not all states require that such immunity is included in the Articles of Incorporation, but some do. It is best to have the immunity

provisions statute expressed, quoted, or referenced in the organization's articles of incorporation to be effective for that corporation.

Naturally, there are conditions that directors/officers and/or volunteers must have met (among others):

- The directors/officers and/or volunteers acted, or reasonably believed they acted within the scope of their authority;
- The directors/officers and/or volunteers were acting in good faith
- The director's/officer's and/or volunteer's conduct did not amount to gross negligence or willful and wanton misconduct; and
- The director's/officer's and/or volunteer's conduct was not an intentional tort.

Areas That Would Not Be Considered an Immunity of Liability

- A breach of the director's/officer's and/or volunteer's duty of loyalty to the corporation;
- Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- Transaction(s) from which the directors/officers and/or volunteers derived an improper personal benefit; and
- Act(s) or omission(s) which are grossly negligent.

Having limited liability immunity provisions within the Articles of Incorporation does not exclude the possibility of legal action being filed against directors/officers and/or volunteers. Nonprofit corporations should consider directors'/officers' and/or volunteers' insurance provisions as well for the indemnification against certain kinds of legal expenses that may be allowed by your individual state law.

IRS Audits

If the affiliate chapter is operating under the nonprofit status of RID and has not filed for separate incorporation and tax-exempt status, then the affiliate chapter must follow the reporting procedures as outlined in the Affiliation Check List. Nonprofit organizations that must respond to an IRS audit will need to be prepared for review of the following:

- Governing documents
- Copy of exemption determination letter (letter received from your state showing approval as a nonprofit corporation)
- Minutes of meetings (board of directors/officers and general membership): usually several years worth are requested
- Financial records, including check register, canceled checks, bank statements, invoices, receipts, and auditors report and working trial balance

- 990s for years before and after specific year under audit
 - Copies of all other federal tax and information returns filed, such as 940, 941, W-2, W-3, 1099 and 1096
 - Pamphlets, brochures, descriptive literature, etc.
 - Newsletters, if the organization publishes one
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References:

Nonprofit Risk Management Center. (1999). *Liability basics for nonprofit organizations*
Retrieved January 1, 2003 from <http://222.nonprofitrisk.org/advice/advice.htm>

SAMPLE §501(c)(3) Articles of incorporation. (n.d.) Retrieved April 1, 2003, from
<http://www.mapnp.org/library/legal/articles.htm>

U.S. Department of the Treasury. (July, 2001 Revised). *Tax-exempt status for your organization* (Publication No. 557). Retrieved July 17, 2001, from the Internal Revenue Service Online via: <http://www.irs.gov/pub/irs-pdf/p557.pdf>

Appendix A

[SAMPLE §501(c)(3)] ARTICLES OF INCORPORATION OF *Name of Organization*

The following sample Articles of Incorporation portrays the nature and scope of an Articles of Incorporation. The sample should not be adopted without discussing more in depth with an attorney.

The undersigned incorporator(s), (a) natural person(s) 18 years of age or older, in order to form a corporate entity under Minnesota Statutes, Chapter 317A, adopt(s) the following articles of incorporation.

ARTICLE I NAME/REGISTERED OFFICE

The name of this corporation shall be _____ [INSERT NAME ACCURATELY]. The corporation's registered office is located at [INSERT STREET ADDRESS, ALSO WITH ZIP CODE IF IT IS APPROPRIATE FOR MAILING ADDRESS (MAILING ADDRESS -- INCLUDING THOSE WITH P.O. BOXES -- MAY BE SHOWN VIA PARENTHETICAL ADDITION)].

ARTICLE II PURPOSE

This corporation is organized exclusively for charitable purposes [you may, alternatively, replace "charitable", or augment with one or more of the following permitted purposes: EDUCATIONAL, SCIENTIFIC, RELIGIOUS, LITERARY, PROMOTING AMATEUR ATHLETICS, OR EDUCATIONAL] within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, including, for such purposes, the making of distributions to organizations that also qualify as Section 501(c)(3) exempt organizations. To this end, the corporation shall [. . . here is where one enumerates specific purposes and activities.] [All funds, whether income or principal, and whether acquired by gift or contribution or otherwise, shall be devoted to said purposes.

ARTICLE III LIMITATIONS

At all times the following shall operate as conditions restricting the operations and activities of the corporation:

1. No part of the net earnings of the corporation shall inure to any member of the corporation not qualifying as exempt under Section 501(c)(3) of the Internal

- Revenue Code of 1986, as now enacted or hereafter amended, nor to any Director or officer of the corporation, nor to any other private persons, excepting solely such reasonable compensation that the corporation shall pay for services actually rendered to the corporation, or allowed by the corporation as a reasonable allowance for authorized expenditures incurred on behalf of the corporation;
2. No substantial part of the activities of the corporation shall constitute the carrying on of propaganda or otherwise attempting to influence legislation, or any initiative or referendum before the public, and the corporation shall not participate in, or intervene in (including by publication or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office; and
 3. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended.
 4. The corporation shall not lend any of its assets to any officer or director of this corporation [unless such loan program is regularly conducted as part of the activities of the organization and the qualification of the individual to participate in same is determined by a panel comprised solely of non-Board members], or guarantee to any person the payment of a loan by an officer or director of this corporation.

ARTICLE IV DIRECTORS/MEMBERS

The corporation [choose one of the following]

Shall have no voting members. The management and affairs of the corporation shall be at all times under the direction of a Board of Directors, whose operations in governing the corporation shall be defined by statute and by the corporation's by-laws. No Director shall have any right, title, or interest in or to any property of the corporation.

May (but need not) have voting members, and such membership, if any, and classes thereof, shall be as defined in the corporation's bylaws. The management and affairs of the corporation shall be at all times under the direction of a Board of Directors, whose operations in governing the corporation shall be defined by statute and by the corporation's by-laws. No member or Director shall have any right, title, or interest in or to any property of the corporation.

Shall have a voting membership, and may have classes of it (if any), as defined in the corporation's bylaws. The management and affairs of the corporation shall be at all times under the direction of a Board of Directors, whose operations in governing the corporation shall be defined by statute and by the corporation's by-laws. No member or Director shall have any right, title, or interest in or to any property of the corporation.

[OPTIONAL: The corporation's first Board of Directors shall be comprised of the following natural persons: {List Directors' Names, and optionally, Addresses}]

**ARTICLE V
DEBT OBLIGATIONS AND PERSONAL LIABILITY**

No member, officer or Director of this corporation shall be personally liable for the debts or obligations of this corporation of any nature whatsoever, nor shall any of the property of the members, officers or Directors be subject to the payment of the debts or obligations of this corporation.

**ARTICLE VI
DISSOLUTION**

Upon the time of dissolution of the corporation, assets shall be distributed by the Board of Directors, after paying or making provisions for the payment of all debts, obligations, liabilities, costs and expenses of the corporation, for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

**ARTICLE VII
INCORPORATOR**

The incorporator(s) of this corporation is(are):

[Insert name(s) and address(es) of individual(s) incorporating entity -- you only need one, but may have more if you wish]

The undersigned incorporator(s) certify(ies) both that she/he/they execute(s) these Articles for the purposes herein stated, and that by such execution, she/he/they affirm(s) the understanding that should any of the information in these Articles be intentionally or knowingly misstated, she/he/they is/are subject to the criminal penalties for perjury set forth in Minnesota Statutes 609.48 as if this document had been executed under oath.

Signature

Date

Appendix B

Table of Who Must File What Form

Form	Title	Due Date	Who Must File	Penalties
990	Return of Organization Exempt from Income Tax	See A	All 501(a) organizations except: <ul style="list-style-type: none"> - organizations with gross revenue < \$25,000 - organizations filing Form 990-EZ - churches - private foundations (file 990-PF) - subordinates in a group return 	See C and D
990 Schedule A	Organization Exempt Under 501(c)(3)	See A	All 501(c)(3) organizations required to file Form 990 or Form 990-EZ	See C and D
990-EZ	Short Form Return of Organization Exempt from Income Tax	See A	Simplified form for use by organizations with gross receipts normally less than \$100,000 and assets under \$250,000	See C and D
990-T	Exempt Organization Business Income Tax Return	See A	All 501(c) organizations with gross income of \$1,000 or more from an unrelated business activity, or with a liability for the proxy tax on lobbying and political expenditures	See E and F
1120-POL	US Income Tax Return for Certain Political Organizations	See B	501(c) organizations with at least \$100 of political expenditures and at \$100 of net investment income	See E and F
4720	Return of Certain Excise Taxes Under Chapters 41 and 42	See B	Public charities with excess lobbying expenditures and/or political expenditures; Disqualified persons and organization managers liable for Chapter 41 or 42 taxes	See E and F

- A – On or before the 15th day of the 5th month after close of the tax year
- B – On or before the 15th day of the 3rd month after close of the tax year
- C - \$200 per day, not to exceed the lesser of \$10,000 or 5% of the gross receipts of the year, imposed on the organization.
- D - \$10 per day, up to \$5,000, imposed upon responsible persons if the return is not filed after written demand by the IRS.
- E – Late filing: 5% of the tax due per month, up to 25%
- F – Late payment: 0.5% of the tax due per month, up to 25%