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Technical Assistance Grants (TAG): Incorporation and Tax-Exempt Status

Community Involvement and Outreach Center

Quick Reference Fact Sheet

The Superfund Technical Assistance Grant (TAG) Program was created to provide grants to groups of citizens living near Superfund sites for the purpose of hiring independent technical advisors. TAG recipients help communities become more active in the Superfund process. To be eligible to receive a TAG, citizens' groups must be incorporated to address the Superfund site. This fact sheet answers questions that frequently arise regarding incorporation and tax-exempt status for citizens' groups. This information will help you get started, but it does not substitute for advice from legal and financial specialists.

What Is Incorporation?

Incorporation is a process through which an organization is granted legal status and is recognized as an entity under state law. An incorporated organization has the legal right and power to enter into contracts, own property, borrow money, and mortgage its property. It continues to exist legally, even if the founders, officers, or directors change.

By incorporating, your group adopts a widely recognized structure and operating procedures required by state law. The process for incorporating varies from state to state. Consult the corporate law of your state government for the specific requirements and steps you must follow. In most states, the corporate division of the Secretary of State is responsible for incorporation of organizations.

What are the Advantages of Incorporating?

In addition to making the group eligible for a Technical Assistance Grant (TAG), incorporating can help your group qualify for financial assistance from other federal, state, public, or private sources. Incorporation also shields officers, board members, and the employees of a corporation from liability and debts incurred by the corporation. Incorporation costs are reimbursable with TAG funds if your group receives a TAG.

When you incorporate, it is important to identify your group as a nonprofit organization. Banks and other financial institutions often favor nonprofit corporations. Consult an attorney for more information on the legal and financial benefits of incorporating your group as a nonprofit organization.

What are the Responsibilities of Officers and Directors?

Directors and officers of a corporation have a legal duty to the corporation. Generally, they may not mix their personal affairs with those of the corporation or act in a way that is harmful to it. The corporate laws in each state include provisions defining the responsibilities and obligations of the corporation's officers and directors. Under the corporate bylaws, an officer or employee must be designated for financial reporting and tax payment. That individual can be held personally responsible if he or she fails to file or pay taxes.

What are the Tax Responsibilities of a Non-Profit Organization?

Incorporating your citizens' group as a nonprofit organization does not automatically exempt the group from taxation. Nonprofit organizations are required to file a corporate tax return (U.S. Internal Revenue Service *Form 1120*) with the federal government, ***even if they take in no revenue.*** The only nonprofit

Procedures for Setting Up a Nonprofit Corporation

1. Contact the state agency responsible for incorporation of nonprofit organizations. In most states, the corporate division of the Secretary of State incorporates nonprofit organizations. Other states have corporate commissions or maintain corporate divisions in departments regulating commerce and business affairs. Telephone numbers for these offices often are listed in the blue pages under "State Government."

   The state agency will provide information on state incorporation laws, tell you how to obtain legal forms, and specify requirements for filing them.

2. Define the purpose of the corporation. Writing a mission statement provides the basis of the organization's charter as a nonprofit corporation. This statement is essential for establishing the organization's identity as a nonprofit corporation. To be eligible for a TAG, the group must state that they are incorporating in order to address the Superfund site in their community.

3. Complete forms and draft other required documents. This generally includes:

   - Arrange for incorporators
   - Select a board of directors
   - Draft a constitution or set of bylaws
   - Draft Articles of Incorporation
   - Draft other required documents

   It is a good idea to get the help of an attorney to assist you in preparing and filing your corporate charter or to review your application package before you submit it to the state. You may be able to find a local attorney to review it *pro bono*. Reasonable fees in most areas of the country range from $250 to $550.

4. Submit paperwork and required fees to the state's incorporating agency. Required fees vary from state to state, but generally they are less than $100. In some states, fees are considerably lower. Check with the state's incorporating agency, a local certified public accountant, or your attorney to find out applicable fees in your state.

   By planning the incorporation process to coincide with the TAG application process, your group will avoid incurring incorporation costs until after you find out if your application is approved. Costs of incorporation can then be reimbursed by the grant. Be sure to state in your application that this is what your group plans to do.

corporations that do not have to file a corporate tax return are those that are recognized by the U.S. Internal Revenue Service (IRS) as "tax-exempt" and that have gross receipts in each tax year that normally are not more than $25,000. Filing for tax-exempt status is a separate process from incorporation, and it is described below.

Most states also require nonprofit corporations to file corporate income tax returns, even if the nonprofit corporation has no revenue. Some states impose a minimum tax on any corporation, even a nonprofit one, that is not recognized as tax-exempt by the IRS. The legal and financial implications vary widely among the states, so it is important to find out what your state requires.

What is a 501(c)(3) Organization?

A 501(c)(3) organization is a nonprofit corporation organized and operated exclusively for a special and useful purpose that is recognized by the IRS as exempt from federal income tax. Section 501(c) of the *Internal Revenue Code* includes more than 20 classifications of organizations eligible for tax-exempt status. The most appropriate classification for citizens' groups is designation as a charitable organization under Section 501(c)(3). This classification allows the organization to solicit financial support from the public and to receive government grants and support from public and private foundations.

Procedure for Securing Tax-Exempt Status for a Citizens' Group

1. Obtain the required forms from the IRS. You will need IRS *Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.*

   Your corporation also must have an Employer Identification Number (EIN) whether or not it has employees or plans to hire any. IRS *Form SS-4, Application for Employer Identification Number*, can be filed at the same time you file an application for tax-exempt status. In most cases, you can submit applications by mail and by facsimile (FAX). The IRS Office in your area can provide the local FAX number. It also is possible to obtain an EIN within 24 hours by calling your local IRS Office.

2. Define the purpose of the organization. A written mission statement is essential for establishing the organization's identity as a nonprofit corporation and obtaining tax-exempt status. The statement should include:

   - Information on how the organization will meet the eligibility criteria under Section 501(c)(3), that is, how it will organize and operate exclusively for one or more of the special purposes specified under Section 501(c).
   - A statement that no part of the net earnings of revenues of the organization will be distributed for the private benefit of individuals or shareholders.
   - Certification that the organization will not engage in lobbying as a substantial part of its activities, and will not participate in any way in political campaign activities. IRS *Publication 557, Tax-Exempt Status for Your Organization* provides useful information for drafting this statement.

3. Submit necessary forms and supporting documents to the IRS. Submit IRS *Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and IRS *Form SS-4, Application for Employer Identification Number* to the appropriate IRS Regional office. Be sure to include all necessary supporting documents.

It also may be necessary to file applications with state and local authorities to obtain exemption from state and local taxes; however, this designation usually is automatic based on the IRS ruling.

Is Tax-Exempt Status Required to Receive a TAG?

No. However, there are several advantages to securing tax-exempt status from the IRS:

- Once tax-exempt status is formally recognized by the IRS, the income and assets of the nonprofit corporation are free from federal taxation and, usually, from state and local taxation, too.
- Some classifications of tax-exempt status offer the nonprofit corporation legal authority to accept contributions, and permit contributors to deduct their donations from income tax.
- A tax-exempt, nonprofit corporation also may apply to the U.S. Postal Service for a special permit for lower-rate postal privileges.

Nonprofit corporations must meet several standards to qualify for tax-exempt status under Section 501(c)(3):

- The organization must organize and operate exclusively for one or more of the special purposes specified under Section 501(c). These include religious, educational, charitable, scientific, or literary purposes; testing for public safety; or other specific purposes outlined in the law.
- None of the net earnings or revenues of the organization can be distributed for the private benefit of individuals or shareholders.
- The organization cannot engage in lobbying (defined as attempting to influence legislation) as a substantial part of its activities.
- Participation in political campaigns or on behalf of any candidate is strictly prohibited.

A nonprofit corporation must provide evidence that it meets these criteria in its bylaws and Articles of Incorporation. It also must demonstrate that the eligibility criteria are met by documenting its actual operations and activities in annual filings with the IRS (usually by filing IRS Form 990 or 900EZ).

Additional Resources:

Ted Nicholas, *The Complete Guide to Nonprofit Corporations: Step-by-Step Guidelines, Procedures and Forms To Maintain a Nonprofit Corporation* (Chicago: Enterprise-Dearborn, 1993). Cost: $19.95.

U.S. Internal Revenue Service *Publication 557, Tax-Exempt Status for Your Organization.* FREE. Find the address of the nearest Internal Revenue Service Office in the "United States Government" section of your local telephone directory. Many IRS publications and forms also are on the Internet at www.irs.ustreas.gov.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 15 1998

OFFICE OF
COMMUNICATIONS, EDUCATION AND
PUBLIC AFFAIRS

MEMORANDUM

SUBJECT: Product Review Comments on ***Technical Assistance Grants (TAG): Incorporation and Tax-Exempt Status***

FROM: Margaret Morgan-Hubbard, Director
Office of Communications

TO: *Rebecca D. Brooks, Product Review Officer* for OSWER → Jean Farrell → Dottie Pipkin

We concur with the final review of your fact sheet. Basically, tax-exempt organizations are not EPA's business, but that of the Internal Revenue Service. We made editorial changes to the fact sheet for you to consider.

If you would like to discuss any concerns please, contact Geneva Ball of my staff at 260-4367.

Thank you

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Office of Communications, Education, and Media Relations

PRODUCT REVIEW TRANSMITTAL FORM

[ ] Concept Notification
[ ] Draft Review
[x] Final Review

Date: Sep 3, 1998

TITLE: **Technical Assistance Grants (TAG): Incorporation and Tax-Exempt Status**

PROGRAM: **OSWER**

COMMENTS DUE: 9/9/98 FYI ONLY: _____

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Non-Concur _____ (Name) _____ (Date) Can Not Evaluate -- Insufficient Information _____ (Name) _____ (Date)

Concur _____ (Name) _____ (Date) Concur w/Comments _____ (Name) _____ (Date) Meeting Requested _____ (Name) _____ (Date)

Comments: _____

RETURN TO: Doris J. Fairley, Room 358 Annex -- Telephone Number: (202)260-5590

Rev. 3/31/98

Final Draft Review - Public-Oriented Products

Official Title: Technical Assistance Grants-I Publication No.: EPA-540-F-98-034

Working Title (if different): Incorporation and Tax Exempt STATUS

Project Originator:
Name-- Dottie Pipkin Phone- 703-603-8889 Office- OSWER/OERR

Target Audience(s):
Congress Delegation
Regional Staff
Community Involvement Staff
Public Affairs

Estimated Cost:
1. Create & Develop: (Research, write, design)..... $
2. Produce: (e.g. camera art, filming)..... $
3. Duplication..... $
4. Distribution..... $

Total..... $

Product Type: FACT SHEET

Estimated Quantity: 500 Copies each

Issues To Be Flagged:

EPA and external offices/organizations your office has involved in the development of this product. (Refer to "List of Potential Reviewers" in the handbook *Developing Products for the Public.*)

AA/RA's Product Review Officer's Recommendation: I have reviewed this final draft based on EPA's Product Screening Criteria in the Handbook and I forward the draft to OCEPA for review.

Name: Becky Brooks Signature: Rebecca D. Brooks

Office: OSWER Telephone: 260-8474 Date: 9/1/98

OCEPA Product Review:
☐ Nonconcur ☐ Reviewed without comment ☒ Reviewed with comments (attached)

☐ A meeting is necessary to discuss comments. (The product should not proceed further prior to this meeting.)

☐ Please send for further review to: _____

Signature: Jeneen M. Ball Date: 9/15/98

EPA Form 2200-7 (Revised 1/97)