

## FORMATION OF A BOOSTER/PARENT ORGANIZATION

### ARTICLES OF INCORPORATION

A non-profit organization is created by filing articles of incorporation with the Secretary of State in accordance with the Texas Non-Profit Corporation Act. A non-profit corporation is characterized by the fact that none of the income of the organization is distributable to members, directors, or officers. By becoming incorporated, the organization will become formalized by adopting Articles of Incorporation and Bylaws which provide standard operating procedures. Additionally, incorporation helps shield the individuals governing and operating the nonprofit organization from liabilities incurred by the organization, unless the individuals are negligent in their duties. Form 202 – *Certificate of Formation – Nonprofit Corporation* is available on the Secretary of State’s website. Two copies of the signed Form 202 should be submitted along with the required filing fee. A District employee cannot be listed as the Registered Agent

### GENERAL FEDERAL REGULATORY INFORMATION

Booster club/parent organization officers are solely responsible for ensuring that their organization is in compliance with all federal regulations. Therefore, the District, including a District employee, is not responsible for a booster club/parent organization not being in good standing with all federal agencies. However, the District has provided the following information that includes the steps that booster club/parent organizations should take to comply with federal tax regulations.

### OBTAINING AN EMPLOYER IDENTIFICATION NUMBER (EIN)

Every organization must have an EIN, even if it will not have employees. The EIN is a unique number that identifies the organization to the Internal Revenue Service (IRS). Since booster club/parent organizations are separate entities from the District, booster club/parent organizations cannot use the District's EIN. An organization is not automatically considered tax-exempt by acquiring an EIN. All organizations must first apply for an EIN to be recognized as a unique entity and then apply for tax exempt status. Likewise, the mere fact that an entity is organized as a non-profit organization does not indicate that it is exempt from federal tax. Booster club/parent organizations may obtain an EIN by following instructions for Form SS-4 - *Application for Employer Identification Number* found on the IRS website. No fee is required for obtaining an EIN. After receiving an EIN, the organization may use it to open a bank account and obtain a State Sales Tax Permit. Booster club/parent organizations should not use an individual’s social security number to conduct the business of the organization. Copies of the completed SS-4 form and the IRS response documenting the assigned EIN number should be kept in the organization’s permanent records from year to year. The booster club may also want to have the Secretary keep a backup copy of these documents on a CD.

### APPLICATION FOR FEDERAL TAX EXEMPT STATUS

Formation of a non-profit corporation does not necessarily entitle the organization to exemption from federal taxes. Organizations must apply for tax-exempt status. In order to be exempt from federal taxes, the booster club/parent organization must apply for this status on Form 1023 – *Application for Recognition of Exemption Under Section 501(c)3*. General instructions on the rules and procedures can be found in IRS Publication 557 – *Tax-Exempt Status for Your Organization*. These documents are available on the Internal Revenue Service website. (Note: When completing the IRS Package 1023, the booster club will establish their fiscal year end. Once this date is established, the IRS does not easily allow an organization to change it. The date established will determine when the booster club/parent organization has to file their informational return (Form 990) to the IRS). Package 1023 is not required of an organization if gross receipts normally do not exceed \$5,000 per year; however, it is still recommended to do so in order to receive a determination letter that recognizes their 501(c)(3) status and specifies whether contributions to them are tax deductible. The completed IRS Package 1023 (application) must be accompanied by Form 8718, *User Fee for Exempt Organization Determination Letter Request*, which provides a user fee to be paid to the Internal Revenue Service. The fee will vary depending on the anticipated annual gross receipts. Upon acceptance of the organization’s exempt status by the Internal Revenue Service, a determination letter will be received as evidence of approval. The letter should be kept in a safe, permanent place as it will be

used time and again to prove the organization's exempt status. In addition, a copy of the letter must be provided to the school's Principal. The IRS approval process for tax-exempt status can take several months.

#### ANNUAL FEDERAL FILING REQUIREMENTS

Every booster/parent organization exempt from federal income tax under section 501(a) is required to either file an annual *Form 990 Return of Organization Exempt from Income Tax*, *Form 990-N Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ* or *Form 990-EZ Short Form Return of Organization Exempt from Income Tax*. The return is due by the 15th day of the 5th month after the close of the organization's tax year or fiscal year. According to the IRS, small tax-exempt organizations, such as small booster club/parent organizations, are required to file an annual electronic notice Form 990-N (e-Postcard). The e-Postcard is required to be filed on-line. The e-Postcard is due every year by the 15th day of the 5th month after the close of the organization's tax year. A booster club/parent organization cannot file the e-Postcard until after its tax year ends. Whether or not a booster club/parent organization has filed for exemption status with the IRS, it should still file the appropriate 990 form as required by exempt organizations. IRS regulations affect not-for-profit organizations and their requirements for financial reporting.

- Booster club/parent organizations must use Form 990-N, normally known as the e-Postcard if gross receipts are \$50,000 or less.
- Booster Club/Parent Organizations must use Form 990-EZ if gross receipts are more than \$50,000 but less than \$200,000 AND total assets are less than \$500,000 at year-end.
- Booster Club/Parent Organizations must use Form 990 if gross receipts are \$200,000 or more OR total assets are \$500,000 or more at year-end.

These provisions may change so consult with a tax professional or the IRS for additional assistance. Even though booster club/parent organizations are recognized as tax exempt, they may be liable for tax on the portion of income deemed to be unrelated business income ("UBI"). UBI is income from a trade or business activity, regularly carried on that is not substantially related to the charitable, education or other purposes that are the basis for the organization's exemption. An organization that has \$1,000 or more gross income from UBI must file Form 990-T; *Exempt Organization Business Income Tax Return*. This form is filed in addition to Form 990 or 990-EZ and is required regardless of the level of the income received.

If the booster club/parent organization's address has changed, a notification must be sent to the IRS to ensure that any IRS refund or correspondence is received. To change an address with the IRS, complete Form 8822, *Address Change Request*, and send it to the address shown on the form.

#### GENERAL STATE REGULATORY INFORMATION

Booster club/parent organization officers are solely responsible for ensuring that their booster club/parent organization is in compliance with all state regulations. Therefore, the District, including any District employee, is not responsible for a booster club/parent organization not being in good standing with all state agencies. However, the District has provided the following information that includes steps booster club/parent organizations should take to comply with state tax regulations.

#### OBTAINING A TEXAS SALES TAX PERMIT

Some items to be sold are non-taxable, however, exempt organizations must get a Sales Tax Permit and collect and remit sales tax for all taxable items it sells. Please refer to the Texas Comptroller's website for a list of taxable and non-taxable items. Booster club/parent organizations may obtain a Texas Sales Tax Permit by submitting the completed application to the Texas Comptroller's Office. Booster club/parent organizations must apply on-line for the Texas Sales Tax Permit. A Texas Sales Tax Permit will be issued to the booster club/parent organization along with a Sales Tax Permit Number. The Texas Sales Tax Permit Number has 11 digits and begins with a 1, 2, or 3. The permit numbers beginning with a "1" are based on an entity's EIN. Those permit numbers beginning with a "2" are based on a person's social security number. The permit numbers beginning with a "3" are assigned by the Comptroller's Office. Booster club/parent organizations cannot use the District's Sales Tax Permit Number. The

searchable Taxpayer Information Database located on the Texas Comptroller's website can be used to determine if a booster club/parent organization has a Sales Tax Permit.

#### APPLICATION FOR STATE TAX EXEMPT STATUS

The organization must apply for an exemption from sales and franchise tax from the Texas State Comptroller's office. To apply for exemption based on the federal exempt status, complete application AP-204 which can be found on the Texas Comptroller's website. Organizations that have received a letter of sales tax exemption from the Texas Comptroller do not have to pay sales and use tax on taxable items they buy, lease or rent if the items are necessary to the organization's exempt function. Exempt organizations should claim an exemption at the time of purchase by providing a properly completed exemption certificate in lieu of paying tax to the retailer. This exemption process is separate and in addition to applying for federal tax-exemption from the IRS. Further information may be obtained on the Comptroller's website.

#### FRANCHISE TAX

Every profit and nonprofit corporation in Texas must file all franchise tax reports and public information reports with appropriate payment until the Comptroller's office has granted tax exemption. Failure to do so will cause the loss of corporate privileges as well as the forfeiture of charter by the Texas Secretary of State. Booster club/parent organizations that have received their Determination Letter from the IRS granting 501(c)(3) tax exemption may also request exemption from the Texas franchise tax through the Texas Comptroller's Office. Although a nonprofit corporation that is exempt from federal income tax under Internal Revenue Code 501(c)(3) is exempt from franchise tax, the exemption is not automatically granted. Booster club/parent organizations must apply for exemption with the Texas Comptroller's Office based on the federal exempt status. If the mailing address for the booster club/parent organization changes, immediately notify the Texas Comptroller's Office. Failure to do so may result in important correspondence being lost. To avoid frequent mailing address changes, the Texas Comptroller's Office recommends that each booster club/parent organization obtain its own post office box or private mailing box to be used for official booster club/parent organization mail. In addition, the post office box address and keys can be given easily to the new officers at the beginning of each year.