Booster Club Legal Pitfalls
..to 501(c)3 or not..
THAT, is the (multiple) question(s)!

Barry E. Morgan
Cobb County Schools


band mom
DIRECTORS WORST NIGHTMARE

“The Booster Leader”..Dan Caldwell

“School Fundraising”…Sandra Pfau England, Esq.

Pros

- Tax deductible donations
- Protection from personal liability
- Separate and perpetual legal existence
- Formal documents, rules, procedures governing the organization
- Parental involvement

Cons

- Initial and ongoing costs…time, effort, and money
- Ongoing paperwork
- Shared control
- Public scrutiny
- Parental involvement

Common Legal Issues

- IRS
- Parent
- Community

Common Legal Defenses

- I didnt know
- SODD
- Sovereign Immunity

Some people LOVE the IRS!

Others, Not so much.

AUDIT!!!!!


MERRY
CHRISTMAS
WAC
WESTLAKE ATHLETIC BOOSTER CLUB
TAX EXEMPT STATUS
REVOKED

Required IRS Filings of 501(c)3

- Annual Exemption Organization Return-990
- Jeopardizing Exemption "an inured benefit"
- Employment Taxes 1099
- Substantiation and Disclosure Written acknowledgment $250 or more
- Public Disclosure Requirements 990s available for inspection

Statute of Limitations

- Normal case 3 years
- If underpay is more than 25% 6 years
- Fraud and deceit no statute of limitations

Student Accounts

Private benefit/Private inurement

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

June 27, 2011

TO: Director, Exempt Organizations, Examinations SE:T:EO:E
Director, Exempt Organizations, Rulings & Agreements SE:T:EO:RA

FROM: Lois G. Lerner /s/ *Lois G. Lerner*

Director, Exempt Organizations

SUBJECT: Booster Club Dues and Non-Exempt Activity

In a recent Program Manager Technical Assistance (PMTA) requested by R&A (attached), the Office of Associate Chief Counsel (Income Tax & Accounting) concluded that booster club participants may be eligible to deduct the amount contributed under § 170 to the extent that the contribution exceeds the value of the return benefits received, if the participants intended to make a charitable contribution in the amount of the excess of the contribution over the value of the benefits received.

To clarify for agents and tax law specialists, the PMTA is focused solely on the tax consequences to the individual participants. It does not address the tax-exempt status of the organization, specifically, the possible tax consequences for the organization in situations where a booster club reduces the amount a participant is required to pay based on the amount of fundraising done by that participant.

Crediting of Fundraising Amounts Constitutes Private Benefit
If a booster club confers a benefit on a participant in return for their fundraising activities, such as by crediting amounts raised by a participant toward that participant's dues requirement, or by crediting amounts raised against the cost of a trip, the booster club is providing a private benefit to that participant. Consequently, such practices could result in the organization failing to be described in § 501(c)(3).

Income from Services
It is also possible that amounts credited to a participant's account due to fundraising would constitute income from services, and could result in employment taxes.

More information is contained in the 1993 CPE Text *Athletic Booster Clubs: Are They Exempt?*, available at http://www.irs.gov/charities/article/0,,id=113083,00.html. Please contact Justin Lowe at (202)-283-9486 with any questions.

Rage of the 90s
But in 2008

- Bryan Station Baseball Booster fined $61,000/$44,000 annual budget
- Henry Clay Band Boosters fined $30,000
- Lafayette Kentucky Band Boosters fined $9000
- Reduced the annual fees (fair share) required therefore exposing the parents to IRS fines because it is considered income

What's at risk?

- Revocation of 501(c)3 status and demand for all eligible taxable income.
- Fines against the booster club
- Taxes and penalties to the parent for the private inurement

Freeloader Solutions

- Fair share donation program
- Conduct cooperative fundraising in a separate, taxable cooperative organization.

ALL AMERICAN HIGH SCHOOL BAND BOOSTERS—ANNUAL FUND DRIVE

Dear Band Parents,

The All American High School budget contributes only a portion of the actual cost of operating the All American High School band. Your donations and help with fundraising events are essential to ensure that the band keeps marching in style.

This year the All American High School Band Boosters have been asked to raise $45,000 to supplement the school budget. With 150 students in the band this year, a contribution of $300/student is needed ($45,000/150 = $300).

Your support is vital. Please let us know how you are able to contribute your fair share to the band program this year.

I/We enclose a donation of $ ______________ to support the band program

I/We agree to help with the following fundraising activities:

Car washes (October, December, March, May)

Candy bar sales (September)

Football game concessions

Other

Name of student: ______________________

Name of parent(s): ______________________

Email: ______________________

Email: ______________________

Separate taxable entity

- Voting must be democratic, each member one vote
- All earnings distributed to the members in proportion to their time, and taxable on their personal tax returns
- IRS 1099-PATR must be issued with all earnings received by the member.
- Expense of setting up separate corporation.
- Most stadiums want to work with 501(c)3 organizations so they receive a tax benefit and will not work with for profit entities

The Legality of School Booster Clubs Engaging in Cooperative Fundraising Activities:
A White paper to help determine if your fundraising activities are legal.
Sandra Pfau England

https://parentbooster.org/resources/documents/cooperative%20fundraising%20activities%20white%20paper.pdf

Pursuant to IRS rules money raised or contributed by a parent CANNOT be returned, or credited to another student. It must inure to the benefit of the whole organization.

Parents

- Overbearing..not understanding their role
- Not properly trained...vicarious liability
- Theft....Criminal penalties and school consequences

Protecting the organization from Theft

- Split financial duties between a treasurer and a bookkeeper
- Try to elect those positions from those who have accounting, finance, bookkeeping experience
- Hire/volunteer a CPA
- Two signatures for all amounts
- Monthly financial reports
- Dan Caldwell's Book has a whole chapter on many more safeguards

Booster Sponsored Community Events

You now owe a duty of care to the public you invite to your event

Community events

- Concert
- Show Choir Competition
- Marching Band Contest
- Orchestral Jamboree
- Booster Club 5K
- Spaghetti Supper
- Concession stands

Booster Club Insurance

- Directors and Officers
- General Liability
- Bonding
- Property

Questions?

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