

Incorporating as a nonprofit
corporation
&
The
Group Tax Exemption Program

The “Whats”, The “Whys” and
The “Hows”

June 5, 2016

What is a Nonprofit Corporation

- In Michigan, Nonprofit corporations are organizations from which officers, directors, members and associates do NOT receive a return or dividend for being involved in the corporation.
- In Michigan, almost all nonprofit corporations are established under the Michigan Nonprofit Corporation Act. It is state, or in this case, it is Michigan law that establishes WHAT kind of a legal entity your club has.
- About one-half of all nonprofit corporations qualify for tax exempt status under federal law as a 501(c)(3) organization. **Please note: It is Federal law that determines income tax status, not state law.**

What is a Nonprofit Corporation CONTINUED

- NOT ALL NONPROFIT CORPORATIONS QUALIFY FOR 501(C)(3) STATUS, could be 501(c)(7) or 501(c)(4) or any other of the 29 tax exempt status sections
- NOT ALL 501(C)(3) ORGANIZATIONS ARE CORPORATIONS, could be such as most of you are now, an unincorporated association
- TO QUALIFY FOR THE GTE PROGRAM, YOUR CLUB MUST BE A NONPROFIT CORPORATION – this is a requirement of MGC, Inc, not the state of Michigan or the Federal Government, IRS.

Why should my garden club be a nonprofit corporation?

- If your club is a corporation, appropriately formed and operated, your members should be shielded from negligence, tortious or contractual obligations, as well as tax liability.
- Nonprofit corporations can be sued, but the members and directors of the corporation are generally protected from personal liability. That is not true if the organization is an unincorporated association. Each member of the unincorporated club may be held jointly liable for debts and obligations of the unincorporated organization.

These are just some of the reasons you should incorporate as a nonprofit corporation.

Top 5 Complaints I hear about incorporating?

1. There is so much paper work to become incorporated!
2. There are so many reports you have to file!
3. Who will do all these reports?
4. Where do we do keep them?
5. How can we keep track of all that needs to be done?

These complaints are exactly **WHY** you should incorporate!

My answers to all these complaints:

1. There is so much paper work to become incorporated!

All you do to incorporate is :

- File Articles of Incorporation – See Appendix B in Handbook for example
- File an annual report each year starting with the year after your incorporation.
- File an annual report with the Attorney General’s office after registering with them.

That’s it – two mandatory state annual reports for your corporation.

2. There are so many reports you have to file!

Beyond the mandatory annual corporate report there are reports you SHOULD be filing anyway NOW– even as an unincorporated association or club:

- State sales tax
- State and Federal Income tax return (as a partnership)
- If you are tax exempt organization (even as an unincorporated association) you are required to file an informational return each year if your revenue is less than 50,000. 00 per year.
- For most of you that means a 990N – can only file online.
- Three tax reports, one for sales tax (state) and one with the state and IRS

3. Who will do all these reports?

- **DO NOT BURDEN YOUR PRESIDENT OR YOUR TREASURER OR ANY OFFICER!**
- Appoint a Resident Agent (or committee) who will continue in that position until she/he/they resign from the club or dies.
- Appoint someone who can learn about the reports required, - has a calendar and computer - and fill out and file all required reports for your club.
- I guarantee, after one or two times, that person will be an expert!

4. Where do we do keep the reports?

This should be the responsibility of your “Resident Agent/Reporter” (or committee)

- Most clubs have a slap-dash approach to keeping records.
- All clubs should have a single or categorized book(s) in which club minutes, treasurer reports and other club business reports are kept.
- All clubs should have copies of all reports filed with any governmental agency by your Resident Agent/Reporter Committee.
- You can also find most government agency reports now on the websites for the various agencies.
- Find a way to digitize and store your records in a “cloud”.

5. How can we keep track of all that needs to be done?

Remember that Resident Agent/Reporter/Committee I mentioned?

- Appoint one person or a committee to monitor dates and file reports. Some clubs have an appointed position called “Reports Secretary”.
- Make sure this person/committee members all have access to a computer and an automatic calendaring system.
- Make sure all access codes for online filings are known to each member of the committee and all officers too. See Appendix I of the Handbook.
- Have a calendar of all due dates given to each Officer.

5.(cont.) How can we keep track of all that needs to be done?

- Have your Resident Agent/Committee person report to the Board at each meeting the status of required reports –can be in writing
- Also a report as to what **report is due next** and **when** should be given.
- File copy of reports in your Club's Official Book of Business Records (minutes, treasurer's report, etc.)
- If no report is given, **FIND OUT WHY NOT!**

Final reasons to incorporate as a nonprofit:

- You can establish your existence, your new existence, as a nonprofit corporation exempt from State and Federal income tax.
- You can apply for participation in the MGC group tax exemption program (GTEP).
- If approved for the GTEP, upon proper application to the Lottery Bureau, you can now apply for a license to hold a LEGAL RAFFLE!

MGC Group Tax Exemption Program (GTEP)

❖ What is the GTEP?

- It is a process by which a local garden club, affiliated with MGC, Inc., may join in the charitable tax exempt and tax deductible status of MGC, Inc., as a 501(c)(3) exempt organization under IRS rules.
- As a 501(c)(3) exempt organization your club can:
 - **Solicit funds from donors and offer a tax deduction.**
 - **Hold a raffle – only charitable organizations can hold raffles legally.**
 - **Be exempt from paying State sales tax for purchases by or for the club's mission and an exemption of up to \$10,000 from sales taxes.**

What are the requirements to become part of the GTEP?

Briefly the requirements are:

- Be a nonprofit corporation – MGC, Inc., requires this, not IRS
- Be a member of MGC, Inc., and have the same mission and objectives
- Sign the Affiliation Agreement with MGC, Inc., see Appendix D
- Be compliant with IRS reporting requirements (990 filings)
- Have the same accounting period as MGC, Inc.: 6/1 to 5/31
- Maintain an activity and financial statement each year
- Be current in your dues to MGC, Inc.
- Pay a 75.00 one time fee

What do we do to join the GTEP?

- Submit your Intent to Join the GTEP by July 15, 2019 by email to me at my address in the Handbook.
- Then incorporate as new entity or amend the Articles of Incorporation, (*some of you may have to dissolve the corporation and start over*) complete the Bylaws and follow the steps in the Handbook.
- Complete the application, See Appendix C.
- Complete and sign the Affiliation Agreement (which must be approved by your club) See Appendix D.
- Provide a copy of your Articles of Incorporation and Bylaws for the new corporation. See Appendix B for sample of Articles of Inc.

What do we do to join the GTEP, continued

- Provide a list of your club's activities and a simple financial statement for your last fiscal year (in this instance you can use the former club's information) See Appendix E and F for samples.
- Send a check for 75.00 along with all the above documents to MGC GTE Program, Attn Rose Houk, PO Box 564, DeWitt, MI 48820
- Email **ONLY** the documents to me at my email address: houkra@gmail.com

By when does all this have to be done?

- Notice of Intent to Join – **July 15, 2019**. This is just a notice and does not commit you to actually joining.
- If you decide NOT to join, let me know before September 1st.
- Application and all supporting documents and check: **October 1, 2019** to the GTEP Chair by regular mail.
- That's it –MGC, Inc., will file a notice to IRS to include you in the Group Tax Exemption sometime after the first week in November.
- MGC, Inc., will send you notice of your status along with your tax exempt letter.

OMG, are you serious – how do we do all this
by October 1st?!?

- Stay with me – it really is possible.

How to do this by Oct 1

Here are some suggestions to make it easier:

- Set up a committee - 3 people and I suggest one be an officer.
- Try to include whomever will be the Registered Agent/Reporter so she/he will be familiar with what is done and how and with what agency and when.
- Use and use and use again all the Appendices available to you – but especially Appendix A, suggested and required Articles of Incorporation.

How to do this, continued

- Some of your bylaws may need to be changed, but most of the current club's bylaws can be used for the “new” club. There will be changes, mostly additions.
- Keep all drafts of what is done on a thumb drive that can be given to someone on the committee should the lead person not be available.
- Use email to send drafts of the work to be approved by the rest of the committee- use Google docs so all on the list can share the same file.

OMG: take a deep breath

- Schedule a meeting with your Board to approve the final Articles of Incorporation. File the Articles of Incorporation- this should be done only if a new corporation, BUT when you file them is important, if you cannot do all this by the OCT 1 deadline, then do not file anything until **next year**.
- Schedule a special meeting of the membership to approve the final documents including the application to join the GTEP and the Affiliation Agreement.
- As soon as the Incorporation documents are received (marked with a filed stamp) from the CSCL Bureau, file for an EIN (a new one even if you have one already. This is why you may wish to use “Incorporation” in the name of your corporation as it should flag as a new entity with IRS).
- You are ready to file an application for the GTEP.

Problems?

- If you have problems with process or procedure, please email me at [houkra@gmail.com](mailto:hokra@gmail.com).
- Make sure the **name of the club** is in the **subject line** of the email and the **specific question** you are emailing about.
- If **another concern** arises, **use a new email** and again put your club name and the specific question in the email.
- This will save me from having to look through an email thread several pages long if I need to refer back to a specific problem.

One more thing -

- There is absolutely **NOTHING** that says you **HAVE** to apply for the GTEP this year!
- If you **CANNOT** get all this done by October 1st; **start** the process now, then submit a notice of intent next year by July 15th. Do **NOT FILE** anything until after June 1, 2020 if you cannot meet the Oct 1 deadline for 2019.
- There are some clubs here today that are ready to apply this year.
- If your club is not ready— take a deep breath, read the Handbook, which will be posted after the conference, and start working on the process to join the GTEP next year.
- We will wait for you!

What to do and when

- If you cannot get all this done by Oct 1 of this year, wait until June 1st of next year to file Articles of Incorporation, to file for new EIN, to approve final bylaws – WHY?
 - Because you will have a 990N due Oct 15, 2019
 - Because you will be out of sync for the application process for the GTE Program.
 - And because you do not want to get on my bad side!!!! I am the one who reviews all documents, so if I have a tardy one or one that comes into the process mid-year, it really upsets my carefully planned out schedule. (Don't I wish!)