



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP
THE CHARTER LAW FIRM

December 12, 2017

ATTORNEY/CLIENT PRIVILEGED &
CONFIDENTIAL COMMUNICATION

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Via Email:
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Roger Coy, School Director
THREE RIVERS CHARTER SCHOOL
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Re: Supporting Foundation: Process for Incorporation and Application for Tax Exemption

Dear Roger:

This letter serves as an overview of the process and timeline for the incorporation of TRCS Foundation and its applications for federal and state tax exemption. Additionally, this letter explains filing requirements for nonprofit public benefit corporations and organizations exempt from federal and state corporate income tax.

GENERAL OUTLINE

The following is a general outline of the events that will occur throughout this process:

- (1) File Articles of Incorporation with the California Secretary of State's Office;
- (2) File the Statement of Information (Form SI-100) with the California Secretary of State's Office;
- (3) Obtain Employer Identification Number ("EIN") from the Internal Revenue Service ("IRS");
- (4) Draft Action by Written Consent of Sole Incorporator document;
- (5) Draft and adopt Bylaws;
- (6) File federal Exempt Organization Annual Information Return (Form 990) with the IRS;

- (7) Apply for federal tax exemption (Form 1023) with the IRS;
- (8) Apply for state tax exemption (Form 3500A) with the Franchise Tax Board (“FTB”);
- (9) Upon receipt of a favorable determination letter from the FTB, file state Annual Exempt Organization Return (Form 199) with the FTB.
- (10) Comply with Local Municipal Ordinances.
- (11) Register with the California Attorney General’s Registry of Charitable Trusts.
- (12) Comply with the audit and fundraising requirements set forth in the Californian Nonprofit Integrity Act of 2004.

ARTICLES OF INCORPORATION

Articles of Incorporation were filed with the Secretary of State’s office on December 20, 2016 .

STATEMENT OF INFORMATION (FORM SI-100)

The Statement of Information requires that the foundation provide general contact information to the State within ninety (90) days after filing its Articles of Incorporation. The State imposes a **\$20.00** filing fee. The quickest way to file the Statement of Information is online at <https://businessfilings.sos.ca.gov/> Please contact our office if you would like assistance with filing the Statement of Information.

EMPLOYER IDENTIFICATION NUMBER (EIN) (FORM SS-4)

The Employer Identification Number (“EIN”) is a nine-digit number assigned to corporations for tax filing and reporting purposes. In addition, this number serves as an identification number for the corporation so that it may conduct business transactions, such as opening a bank account or hiring employees. This number is also referred to as your Federal Tax Identification Number. Consequently, you will give this number to donors so they may track their charitable contributions.

The foundation has multiple options when applying for an EIN: by telephone, by fax, by mail or online. The quickest method is to apply online at the IRS website: <https://sa1.www4.irs.gov/modiein/individual/index.jsp>. This interactive website will ask you a series of questions. Please keep in mind that you are applying as a corporation, and that you are applying as a “new business.” If our office applies on behalf of the foundation, we would need the organization to sign a third-party designee, which is equivalent to a power of attorney, and then we would need to send the signed application to the IRS before we could contact the IRS. If one of the



foundation's officers or directors applies for the EIN, he/she will get the EIN immediately. However, if you need any assistance with this process, please let our office know and we would be happy to assist.

Once the foundation has obtained an EIN, please contact me to inform me of the number, so that our office will be able to prepare the application for Federal tax exemption.

ACTION BY WRITTEN CONSENT OF SOLE INCORPORATOR

Upon request, we will prepare for your review a document entitled, "Action By Written Consent of Sole Incorporator" in which the individual who served as the Incorporator of the foundation will exercise his/her authority under California Corporations Code Section 5134 to appoint the initial Board of Directors of the foundation. The Action By Written Consent of Sole Incorporator document will list the names of the individuals appointed to serve on the initial Board and will state that the Incorporator will be resigning as Incorporator of the foundation effective as of the date of the document.

BYLAWS

Our office prepared bylaws that comply with the California Corporations Code and the requirements of the Internal Revenue Code for a supporting organization.

APPLICATION FOR FEDERAL TAX EXEMPTION (FORM 1023)

The application for federal tax exemption is submitted to the IRS (Form 1023). The foundation will have 27 months from the date of its incorporation to file its application for federal tax exemption. As TRCS Foundation incorporated on December 20, 2016, **the 27-month deadline expires on March 31, 2019.**

The IRS charges a handling fee of **\$850.00**, which our office will seek from the foundation after we have sent a draft of the completed application for the foundation's review.

In order to file a comprehensive application with the IRS, the foundation will need to provide the following information and supporting documents:

1. A copy of the foundation's articles of incorporation.
2. A copy of the foundation's adopted bylaws.
3. A copy of the Charter petition(s) of the charter school(s) that the foundation is supporting;



4. Minutes of the meeting in which the granting authority (i.e., the District) approves the Charter petition(s) of the charter school(s) that the foundation is supporting;
5. Minutes of the meeting in which the Board of Directors are elected or appointed to their respective positions.
6. Names of all Board Members and corporate officers.
7. The compensation being received by all of the Board Members and corporate officers, if any.
8. Names, titles, and amount of compensation for the five (5) highest paid individuals employed by foundation that receive \$50,000 or more per year, if any.
9. Names and mailing addresses of the five (5) highest paid independent contractors that receive \$50,000 or more per year, if any.
10. The qualifications, average hours worked, and job duties of the following individuals: directors, officers, the five (5) highest paid individuals employed by the foundation that receive \$50,000 or more per year, and the five (5) highest compensated independent contractors that receive \$50,000 or more per year.
11. Do or will the individuals that approve compensation arrangements (e.g., foundation Board of Directors) follow a conflict of interest policy? If so, please provide the adopted conflict of interest policy. If not, our office can provide such a policy.
12. Do or will the individuals that approve compensation arrangements (e.g., foundation Board of Directors) approve compensation arrangements in advance of paying compensation?
13. Do or will the individuals that approve compensation arrangements (e.g., foundation Board of Directors) approve compensation arrangements based on information about compensation paid by similarly situated taxable or tax-exempt organizations for similar services, current compensation surveys compiled by independent firms, or actual written offers from similarly situated organizations?



14. Do or will the individuals that approve compensation arrangements (e.g., foundation Board of Directors) document in writing the date and terms of approved compensation arrangements?
15. Do or will the individuals that approve compensation arrangements (e.g., foundation Board of Directors) record in writing the decision made by each individual foundation Board Member who decided or voted on compensation arrangements?
16. Do or will the individuals that approve compensation arrangements (e.g., foundation Board of Directors) record in writing both the information on which they relied to base their decision as well as its source?

If the answer to any of the questions in 9-14 is “no,” then we have to describe how compensation arrangements for the directors, corporate officers, the five (5) highest paid individuals employed by the foundation that receive \$50,000 or more per year, and the five (5) highest compensated independent contractors that receive \$50,000 or more per year, are reasonable.

17. Will the foundation fundraise using any of the following techniques: (a) mail solicitations; (b) email solicitations; (c) personal solicitations; (d) vehicle; boat, plane, or similar donations; (e) foundation grant solicitations; (f) phone solicitations; (g) accept donations on the foundation website; (h) accept donations on another organization’s website (e.g., the website of the charter school(s) the foundation is supporting); (i) government grant solicitations; and (j) other? Please provide any documents to explain how the foundation operates any of these various fundraising methods.
18. Sample newsletters or advertisements the foundation uses to attract donors/sponsors.
19. Any and all lease agreements.
20. A copy of the current budget.
21. A copy of a budget for the previous two (2) years or a copy of a projected budget for the next academic year.
22. The Employer Identification Number (also known as the Federal Tax Identification Number) of the foundation.



Please provide the information and supporting documents to our office as the foundation acquires them, otherwise, we will contact the foundation as we prepare the application for Federal tax exemption.

Length of Time for Application Process

Unfortunately, the IRS takes at least **180 days** to review an application for federal tax exemption. Within that period of time, the IRS may follow up with additional inquiries, which we will address with the foundation's assistance.

FEDERAL ANNUAL INFORMATION RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX (FORM 990)

Organizations that are exempt from federal income taxes under IRC Section 501(a) must file a Form 990 annual information return with the IRS. (IRC Section 6033(a).) The deadline for filing Form 990 is the 15th day of the 5th month after the close of the foundation's accounting period, which would be **November 15** of every year. (IRC Section 6072(e) and Reg. Section 1.6033-2(e).) Failure to file the Form 990 annual information return for three consecutive years will result in automatic revocation of an organizations tax-exempt status.

Please notify your tax advisor or accountant of the creation of the nonprofit foundation and your obligation to file the Form 990.

APPLICATION FOR STATE TAX EXEMPTION (FORM 3500)

Our office will also complete the application for state tax exemption (Form 3500A) which is submitted to the Franchise Tax Board. Typically, we will wait until we have received a favorable determination letter from the IRS before we submit this application. With the passage of California Assembly Bill 897, which went into effect January 1, 2008, an organization with 501(c)(3) tax-exempt status can request California affirmation of tax exemption by sending the Franchise Tax Board a copy of its IRS determination letter. There is no application fee.

STATE OF CALIFORNIA EXEMPT ORGANIZATION ANNUAL INFORMATION RETURN (FORM 199)

The Exempt Organization Annual Information Return (Form 199) is filed with the Franchise Tax Board, and it is the state equivalent to the Form 990. There is a \$10.00 filing fee. The deadline for filing the Form 199 is the 15th day of the 5th month after the close of the organization's accounting period, which would be **November 15** of every year. (Rev & T C Section 23772 and 23772(a)(1).)

The Franchise Tax Board takes the position that an exempt organization must file Form 199's in the year in which it receives a favorable determination letter from the Franchise Tax Board.



Prior to filing its application for state tax exemption (Form 3500A), the organization will need to file a state income tax return (Form 100) and seek reimbursement for payments once it obtains its state tax exemption.

We strongly recommend that you immediately consult with a tax advisor or accountant regarding filing federal and state exempt organization annual information returns.

LOCAL MUNICIPAL ORDINANCES

Some local cities and counties have filing requirements for organizations operating in their locale. For example, the City of Los Angeles requires that all charities that wish to solicit public donations file Form 70-20.04, Notice of Intention, at least 15 days before the start of each fundraising campaign or special event. (Los Angeles Mun C ch IV, art 4, §§44.00-44.15.) As such, the foundation should check with the city and county wherein the foundation is located for similar filing requirements, or please contact our office if you need assistance.

REGISTRY OF CHARITABLE TRUSTS

Generally, charitable organizations that hold assets for charitable purposes are required to register with the California Attorney General's Registry of Charitable Trusts. There is an exception under Government Code Section 12583 that specifically excludes educational institutions from the registration requirement. However, IRC 509(a)(3) foundations that provide support to educational institutions (like public charter schools) are not deemed to be educational institutions under Government Code Section 12583. As such, the foundation will be subject to the registration requirement and must register with the Attorney General's Registry of Charitable Trusts before engaging in charitable solicitations.

We strongly recommend that you consult with a tax advisor or accountant regarding registering with the California Attorney General's Registry of Charitable Trusts.

CALIFORNIA NONPROFIT INTEGRITY ACT OF 2004

The California Nonprofit Integrity Act of 2004 ("Act") addresses two broad areas of nonprofit activity: governance of charitable organizations and fundraising by or on behalf of charitable organizations. Specifically, the governance provisions of the Act sets forth requirements for financial audits, for audit committees, for public disclosure of audited statements, and for review and approval by the board of directors of the compensation paid to the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO") of the charitable organization. Further, the fundraising provisions of the Act impose substantial fundraising requirements on charitable organizations.

As previously noted, there is an exception under Government Code Section 12583 that specifically excludes "educational institutions" from the registration requirement. However, entities like the foundation which are created to provide support to educational institutions (like



public charter schools) are not deemed to be educational institutions under Government Code Section 12583. As such, the foundation will be required to register with the Attorney General's Registry of Charitable Trusts and is subject to the Act, and therefore will be subject to the fundraising requirement portions of the Act.

We strongly recommend that you immediately consult with a tax advisor or accountant regarding application of the California Nonprofit Integrity Act of 2004 and the foundation's compliance therewith.

VOLUNTARY OFFICERS AND DIRECTORS

Foundations that choose to incorporate as California nonprofit public benefit corporations would be wise to consider having their officers and directors serve in a voluntary capacity (no compensation of any kind)¹ because under Section 5239 of the California Corporations Code, volunteer officers and directors of California nonprofit public benefit corporations cannot be held personally liable for their negligent acts or omissions so long as: (1) The negligent act or omission was performed within the scope of the volunteer officer or director's duties; (2) The negligent act or omission performed within the scope of the volunteer officer or director's duties was performed in good faith; (3) The negligent act or omission of the volunteer officer or director was not reckless, wanton, intentional, or grossly negligent; and (4) The damages caused by the negligent act or omission of the volunteer officer or director are covered under a liability insurance policy issued to the nonprofit public benefit corporation.

PURSUIT OF CHARITABLE DONATIONS IN ADVANCE OF RECEIPT OF FAVORABLE DETERMINATION LETTER FROM THE IRS

Many charter schools and their foundations pursue charitable donations in advance of receiving favorable tax exemption determinations from the IRS. However, fundraising can be difficult because donors typically want to receive a charitable contribution income tax deduction in the year they make a donation to a charter school or its foundation. And, to feel secure in taking the charitable contribution deduction in the year of making the donation, often donors insist on being presented with a favorable determination letter from the IRS.

It is important to note that if a foundation files for tax exemption (via filing a Form 1023) with the IRS within 27 months of the date of incorporation, the foundation's effective date of federal tax exemption will be retroactive to the date it incorporated. As such, all donors who made donations to the foundation on or after the date the foundation became a California nonprofit public benefit foundation are guaranteed to receive a charitable contribution income tax deduction under IRC Section 170. Therefore, donors may amend their federal income tax return to claim the charitable income tax deduction once the foundation receives the favorable determination letter.

¹ However, reimbursement by the Foundation to Board Members for reasonable expenses they incur as Board Members will not be deemed to be a form of "compensation."




Further, if you are faced with a situation where a potential donor is unsure about whether to make a donation to the foundation given the fact that it has not yet received a favorable determination letter from the IRS, you can explain that the foundation is operating to support a California public charter school that operates exclusively for educational purposes, and as such, you have every reason to believe that the foundation will be granted federal tax-exempt status as a valid supporting organization described in IRC Section 509(a)(3). Additionally, our firm would be more than happy to draft a letter to potential donors explaining that our firm has a 100% success rate of receiving favorable determination letters from the IRS for both charter schools and their foundations. Hopefully, a letter expressing our firm's anticipation of the foundation's success in receiving federal tax exemption will help to alleviate any concerns by potential donors.

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Please contact me if you should have any questions or concerns regarding this process.

Sincerely,

**LAW OFFICES OF
YOUNG, MINNEY & CORR, LLP**


Kimberly Rodriguez
ATTORNEY AT LAW

