

INCORPORATION AND TAX EXEMPTION FOR
NEW HAMPSHIRE ARTS AND OTHER NON-PROFIT
ORGANIZATIONS: AN INTRODUCTORY GUIDE

The New Hampshire Business Committee for the Arts was formed in 1985 to educate, motivate and recognize business support of and participation in the arts. It has over 80 dues paying members and is affiliated with the national Business Committee for the Arts, Inc.

© 2002, The New Hampshire Business Committee for the Arts

ACKNOWLEDGMENTS

The Guide was originally compiled through the efforts of member law firms of the New Hampshire Business Committee for the Arts including McLane, Graf, Raulerson & Middleton; Orr and Reno; and Sheehan, Phinney, Bass + Green as a demonstration of their belief in and commitment to the importance of the nonprofit community in New Hampshire.

The NHBCA is extremely grateful to the law firm McLane, Graf, Raulerson & Middleton for this current Guide, specifically to attorneys William V. A. Zorn, the major contributor to the Guide since its inception, and his colleague, Rose A. Costello, a cheerful and knowledgeable addition to the project, for their willingness to undertake the task of revising and redesigning a 10 year old document, and to Robert A. Wells, for his support of this project, and leadership as chairman of the NHBCA from 2000-2002. The expertise, professionalism and dedication of these attorneys is valued and appreciated.

The NHBCA also extends a thank you to those who reviewed this document:

Stuart Comstock-Gay
Vice President and Chief Operating Officer
New Hampshire Charitable Foundation

Rebecca L. Lawrence
Director
New Hampshire Division of the Arts
State of New Hampshire

Michael S. DeLucia
Senior Assistant Attorney General
Director
Division of Charitable Trusts
State of New Hampshire

Terry M. Knowles
Registrar
Division of Charitable Trusts
State of New Hampshire

Linda M. Quinn
Executive Director
New Hampshire Center for Nonprofits

The assistance of all is greatly appreciated.

Thomas P. Putnam
Chairman
NHBCA

Joan Goshgarian
Executive Director
NHBCA

PREFACE

The New Hampshire Business Committee for the Arts, formed in 1985 to educate, motivate and recognize business support of and participation in the arts, published *Incorporation and Tax Exemption for New Hampshire Arts and Other Non-Profit Organizations: An Introductory Guide* in response to the many requests for information it received from those seeking guidance in forming a nonprofit arts organization. The Guide was first printed in 1989 and revised in 1992. This current version received a more extensive revision and is available on-line exclusively.

The Guide is intended to provide an overview of the incorporation process including sample forms, expected fees, and contact information. Although some of the specific references are to arts organizations, the Guide has general application, and has been used by several thousand groups with an interest in incorporating as a New Hampshire voluntary corporation and in applying for federal tax-exempt status.

The Guide is intended as an aid in creating a tax-exempt, non-profit corporation in the state of New Hampshire. The material contained in this Guide is intended only as a guide and does not purport to provide definitive answers or all-inclusive samples. WE MAKE NO WARRANTY, EXPRESSED OR IMPLIED, as to whether the materials herein are complete, up-to-date or otherwise. Independent research and verification of all material herein is essential. These materials should be used only as a starting point, not a finished product. Any local authority referred to herein should be checked to determine whether or not it has been reversed, distinguished or amended. Legal counsel should be considered for the purposes of actual incorporation and application for tax exemption.

TABLE OF CONTENTS

A.	Overview.....	1
B.	Why Incorporate and Seek Tax Exemption.....	1
C.	Further Information.....	4
II.	THE NEW HAMPSHIRE INCORPORATION PROCESS.....	6
A.	Reservation of Corporate Name.....	7
B.	Incorporation Documents.....	8
C.	Providing for Corporate Management.....	9
D.	Post-Incorporation Responsibilities.....	10
E.	Duties and Liabilities of Directors of Non-Profit Organizations.....	11
III.	FEDERAL AND STATE TAX CONSIDERATIONS.....	15
A.	Introduction.....	15
B.	Obtaining Federal Income Tax Exemption.....	15
C.	Obtaining State Business Profits Tax Exemption.....	23
D.	Registration with the New Hampshire Attorney General.....	27
E.	Annual Federal Tax Returns.....	24
F.	State Annual Returns.....	27
G.	Miscellaneous Tax Filings.....	25
H.	Forms.....	25
I.	Public Inspection of Annual Return and Application for Taxes and Status.....	26
	APPENDICES.....	29

INCORPORATION AND TAX EXEMPTION FOR NEW HAMPSHIRE ARTS AND OTHER NON-PROFIT ORGANIZATIONS: AN INTRODUCTORY GUIDE

A. Overview

The policies and goals of the state and federal legislation governing non-profit, tax-exempt organizations is to generally encourage and foster a system to assist such organizations in becoming economically viable and to best serve the educational and cultural objectives and purposes for which they were formed. This legislation, however, is also structured to prevent non-profit, tax-exempt organizations from unfairly competing with for-profit businesses and to narrowly confine the privileges and advantages of non-profit status and tax-exemption to organizations that are truly "non-profit" in character. In order to achieve these goals, what has resulted is what may appear to be a complicated and somewhat intimidating set of restrictions, legal requirements and procedures for achieving this desired status.

In order to assist non-profit arts organizations with getting started, this Guide will provide a summary of the various requirements and procedures of non-profit incorporation and of achieving tax-exempt status. In the Appendix, the authors have provided samples of many of the documents discussed herein. Again, the intention of the authors is to provide an overview of the procedures and responsibilities involved in creating a tax-exempt, non-profit corporation in the State of New Hampshire. The Guide is not intended as a substitute for experienced legal counsel. The authors strongly urge that legal counsel be retained for the purposes of actual incorporation and application for tax exemption.

B. Why Incorporate and Seek Tax Exemption

There are many advantages to seeking tax-exempt status as a non-profit corporation. The three most important advantages are economic based. First, a non-profit, tax-exempt organization's income (other than from income from unrelated trade or business) is exempt from

federal income tax. Second, the organization is eligible to receive grants from both public and private organizations (including federal income tax-exempt private foundations). Third, individuals and corporations may deduct contributions to such organizations from their federal income tax. These benefits may provide non-profit, tax-exempt organizations with a substantial advantage in raising funds from the public and private sector.

Other advantages of non-profit incorporation and tax-exempt status include eligibility for preferential postage rates, employment tax advantages and the possible exemption from certain federal excise taxes.

The disadvantages, however, to qualifying as a tax-exempt organization, include strict operating and reporting requirements and restrictions on participation in lobbying activities. In addition, organizations must follow strict guidelines to avoid the prohibition against private inurement; any payment must be reasonable compensation for goods or services actually provided to the organization. Lastly, organization classified as a private foundations are subject to potential excise tax implications.

Alternatives to the often time-consuming and sometimes expensive non-profit incorporation and tax exemption application process do exist and are often appropriate for many small to medium sized organizations. One such alternative involves having a third party (itself a tax-exempt organization) provide grant administration services for the organization. This third party retains the ultimate responsibility for the administration of the grant and bears the burdensome federal reporting requirements. At the same time, the practical administration of the funds can remain with the supported organization. However, this fiscal agent relationship does have legal and administrative implications, therefore, legal advice should be obtained by the parties prior to final approval of any agreement.

For larger organizations seeking complete autonomy, this "short form" alternative is often unsatisfactory. A third party grant administrator has preemptive legal rights subjecting the supported organization's expenditures of the grant money to the approval and control of the third party grant administrator. The third party grant administrator arrangement is often most appropriate in cases where a start-up organization does not have a track record and wishes either to test its cohesiveness and viability prior to incorporation, or has only a single project which it wishes to carry out. Typical third-party organizations, which may be willing to perform the grant administration function, include churches, schools and other non-profit, tax-exempt organizations. In some cases, local governmental bodies may be able to accept and administer grants as well.

A second alternative is to create a formal association (rather than incorporation). This alternative is more complex than simple third party grant administration, but avoids the initial and continuing legal requirements applicable to incorporation. Additionally, it lessens the growing competition for funds in New Hampshire between similar nonprofits. Although the Code¹ grants tax-exemption to any non-profit "corporation," it is not necessary to obtain state law voluntary (i.e. non-profit) corporate status prior to obtaining federal income tax-exempt status. The Code's broad definition of "corporation" includes virtually all unincorporated charitable associations.

It is important to note, that non-profit corporation status is preferred over non-profit association primarily because corporations alone can offer the incorporators the benefits of limited liability and a perpetual existence. Often the biggest concern for non-profit incorporators

¹ All references herein to "the Code" or to Code sections are to the Internal Revenue Code of 1986, as amended, unless otherwise indicated.

is the fear of personal liability by members, officers and directors who lack the insulation of the corporate entity.

Most organizations, whether incorporated or not, should consider the purchase of liability insurance to protect officers, directors and members or stockholders, as well as the organization. This liability insurance, however, does not provide protection from liability in every circumstance. For example, such insurance does not protect members, officers and directors from personal liability for claims based on breach of contract. Further, directors and officers of unincorporated, non-profit organizations may be held liable for injuries to the organization itself. Lastly, directors who unwisely adopt investment policies committing funds to their own outside interests can be held liable for restoration of the assets.

Limitation of liability is of important aspect for consideration when establishing nonprofit, tax-exempt organization. If your organization is ready to seek federal tax-exempt status, often the best approach is to become a New Hampshire voluntary corporation as the first step.

C. Further Information

Again, this Guide is intended merely as an introduction for non-profit incorporators seeking a general understanding of the broad parameters of the non-profit incorporation and tax-exemption processes. The laws, procedures and forms outlined herein are always changing. Non-profit incorporators may wish to consult current sources for a more in-depth discussion of many of these requirements and procedures, and the current law in this area. The following sources of information are offered as a starting point. Specific questions may also be addressed to the Internal Revenue Service who will answer toll-free telephone inquiries at 1-800-529-5500 (or information may be found on line at www.irs.gov) and the New Hampshire Secretary of

State, Corporations Division, State House Annex, 3 Floor, Concord, New Hampshire 03301, (603) 271-3244 (or online at www.state.nh.us/sos/corporate/index.htm).

1. Federal Income Tax Related Publications

- a. Internal Revenue Service ("IRS") Publications. The IRS publishes a series of informational pamphlets designed to assist non-profit incorporators in applying for and preserving federal income tax-exempt status. These pamphlets include Publication 557, "Tax-Exempt Status for Your Organization", and Publication 578, "Tax Information for Private Foundations and Foundation Managers." These publications can be obtained by calling 1-800-829-3676 or online at www.irs.gov.
- b. Volunteer Lawyers for the Arts of New York offers a workshop entitled "Nonprofit Incorporation and Tax Exempt Status." For more information regarding this program, contact them at (212) 319-2787 or online at www.vlany.org.

2. Financial Management

- a. "Business" and financial management advice is offered for non-profit organizations in Mary Wehle's Financial Management for Arts Organizations, published by the Arts Information Research Institute, 75 Sparks Street, Cambridge, MA 02138.
- b. Another source is Turk and Gallo's Financial Management Strategies for Arts Organizations, available from Americans for the Arts, 202.371.2830 or online at www.artsusa.org.

3. Officer and Director Responsibilities

The State of New Hampshire Department of Justice, Charitable Trusts Unit maintains a website located at www.state.nh.us/nhdoj/CHARITABLE/char.html in which it publishes useful information for non-profit organizations. One such publication is the Guidebook for Directors of New Hampshire Charitable Trusts and Non-Profit Organizations. The Charitable Trusts Unit may also be contacted at (603) 271-3591 or N.H. Department of Justice, Charitable Trusts Unit, 33 Capitol Street, Concord, NH 03301.

4. The State of New Hampshire Law Library

The State of New Hampshire Law Library located in the Supreme Court Building in Concord has useful reference materials available to the general public, including the following:

- a. Non-for-Profit Corporations and Associations at the Close of the Century, New Hampshire Bar Association, 1999, a continuing legal education program.
- b. The Law of Tax-Exempt Organizations, 7th ed., John Wiley & Sons, New York, New York, 1998 (with 2002 cumulative supplement).

II. THE NEW HAMPSHIRE INCORPORATION PROCESS

Organizations seeking tax-exempt status have several good reasons to incorporate. As noted above, since a corporation is a legal entity separate from those who own and/or control it, incorporating helps limit the liability of individuals involved with the organization. Additionally, corporations generally have greater ease of obtaining needed capital, credit and insurance.

It is important to note that incorporating also has disadvantages. There are legal costs and fees (due to the New Hampshire Secretary of State) involved in establishing a corporate

structure. Additionally, corporations must follow certain formalities involving time and expense, including adopting by-laws, electing officers, holding annual meetings, and adopting corporate resolutions.

If an organization determines that the advantages of incorporation outweigh the disadvantages, an organization wishing to form a non-profit corporation in New Hampshire should incorporate as a voluntary corporation under Chapter 292 of the NH Revised Statutes Annotated ("NH RSA"). There are four basic steps involved with this incorporation process: (1) reserving and registering a corporate name, (2) filing incorporation documents, (3) providing for management of the corporation and (4) post-incorporation responsibilities.

A. Reservation of Corporate Name

The first step is to select a corporate name. Unlike corporations organized for profit, a non-profit corporation need not include words or abbreviations like "Corporation" or "Inc." in its name. The only legal limitation is that the name selected may not be in use by any other company. An organization may want to use words like "a non-profit corporation" on its stationary to emphasize its corporate status for liability purposes.

To determine if a name is already in use, an organization may contact the Secretary of State, Corporate Division (603-271-3246). If the desired name is unavailable, the organization must choose another name. If the name is available, an organization has the option of reserving the name prior to filing incorporation papers. To do so, the organization must file an Application for Reservation of Corporate Name form with the Secretary of State and pay a \$15 filing fee (fee subject to change). This filing will reserve the name for 120 days. Unless the incorporators believe that the chosen name may be popular or that there is a high likelihood that the name may be reserved by another organization, it is not necessary to reserve the name.

B. Incorporation Documents

The second step to incorporation is to draft Articles of Agreement for the organization that defines and limit the organization's purposes. The New Hampshire Secretary of State issues a sample form of Articles, however, a corporation seeking federal tax-exempt status should be careful using this form. The form includes provisions necessary for an organization to qualify as a voluntary corporation under state law, however, the form does not address provisions necessary to qualify as a tax-exempt organization under Section 501(c)(3) of the Code. A corporation's Articles must not only meet state incorporation requirements, but should also meet requirements for federal tax exemption status. Sample Articles are set forth in **Appendix A** which illustrate the basic requirements of both bodies of law. The Articles do not purport to be the ideal Articles for every non-profit, tax-exempt organization, but provide a basic example. The comments printed in bold below each article explain the purpose of each provision.

It is important to note that every organization incorporating under Chapter 292 that is a "private foundation" as defined in Section 509(a) of the Code is also subject to certain limits on its powers, whether or not those limits are set forth in the Articles of Agreement. Those limits involve highly technical tax matters which are discussed in the Federal and State Tax Considerations section of this Guide.

Once your organization's Articles are complete, you must file them with the New Hampshire Secretary of State, using the following procedure:

1. Sign duplicate originals of the Articles.

2. Submit the two originals along with a check for \$5 (fee subject to change) to the clerk of the town in which your corporation will carry on its business. The town clerk will sign and return the originals to you.
3. Submit the two originals, signed by the clerk, along with a check for \$25 (fee subject to change) to the New Hampshire Secretary of State, Corporation Division, State House Annex, Concord, New Hampshire 03301.
4. After review and approval, the Secretary of State's office will mark the Articles "filed" and will give you back one of the originals.

C. Providing for Corporate Management

1. Board of Directors

RSA 292:6-a requires that a voluntary corporation's board consist of at least 5 voting members, who are not of the same immediate family or related by blood or marriage. Additionally, an employee of the corporation may not also hold the position of chairperson or a presiding officer of the board. The rules are in place to encourage diversity, connection with the public and to promote public confidence in a Board's actions. These rules are not applicable to organizations classified as private foundations under the Code.

2. Bylaws

A non-profit corporation should adopt by-laws to provide rules for structuring and running the corporation. By-laws typically contain provisions for the regulation and management of the corporation, including the responsibilities of the Board of Directors and Officers, members, if any, meetings, and election procedures. If an organization chooses to adopt By-law, they must be adopted by a two-thirds majority of the signers of the Articles of Agreement.

Sample by-laws are provided in **Appendix B** and illustrate only one method of corporate governance. The sample by-laws presume that the corporation will not issue stock, otherwise, the By-laws should contain rules for stockholder meetings, stockholder rights to vote, and stockholder power to elect directors and officers. The comments printed in bold below selected provisions of the By-laws explain the purpose of that provision.

In addition to adopting By-laws and electing officers and directors, the corporation should maintain a record book containing important documents including incorporation documents, annual reports, and minutes of its proceedings at the registered office of the corporation (i.e., with the secretary of the corporation).

C. Post-Incorporation Responsibilities

After incorporation, the corporation has several legal responsibilities. Non-profit corporations must file a renewal return with the Secretary of State, Corporate Division, which will be mailed to the corporation's address every five years (the next renewal is in 2005). The fee is \$25 (fee subject to change). If the corporation fails to file, it will be dissolved.

In order to change the corporation's name, or other items in the corporation's Articles of Agreement, the corporation must file Articles of Amendment with the Secretary of State and in the office of the Town Clerk. The fee for filing with the Secretary of State is \$25 (fee subject to change).

If the corporation ceases to do business, it should file a statement with the Secretary of State, which provides that at least two-thirds of the members or shareholders voted for dissolution and sets forth a plan for distribution of the corporation's assets and satisfaction of its obligations. The treasurer and a majority of the directors or trustees must sign this dissolution

statement. A statement from the New Hampshire Department of Revenue Administration must accompany this statement providing that all taxes have been accounted for or paid.

D. Duties and Liabilities of Directors of Non-Profit Organizations

A Corporation's Director's (and Officer's) legal duties and responsibilities for the management and oversight of the organization include the duties of care and loyalty.

1. Duty of Care

The duty of care requires a director to act in good faith and in a manner that the director reasonably believes is in the best interest of the organization.

a. Ordinary Prudence. A director must discharge his or her duties with the care of an ordinarily prudent person in a like position under similar circumstances. Ordinary prudence requires the director to act in accordance with the following:

(1) Sound Judgment, Common Sense, and Informed Decisions. A director is expected to possess and exercise sound and independent judgment in reviewing the affairs of the organization. A director should discharge his or her duties with common sense and in a manner, the director believes to be in the organization's best interests. A director must take into account the organization's nature, operations, finances and objectives. This does not mean that the director must guarantee the ultimate success of his or her conclusions or act only with excessive caution. Nor should it discourage a director from taking innovative and informed risks. As long as a decision is rational, informed, and involves no conflict of interest, then a director should be insulated from liability.

(2) Diligence and Attentiveness. A director must be diligent and attentive. A director should be willing to spend sufficient time to become reasonably acquainted with the organization's affairs. A director should attend Board and committee meetings, and read

materials provided to him or her in advance of these meetings. In sum, it is incumbent upon a director to participate actively in Board matters.

(3) Reasonable Inquiry. It is the director's responsibility to ensure that the information upon which he or she bases decisions is adequate and reliable. Thus, the duty of care encompasses an obligation of reasonable inquiry. A director cannot avoid liability by claiming ignorance if the circumstances are such that the director knew or should have known certain facts.

(4) Circumstances Dictate Degree of Care Required. The standard of care required will vary depending on the circumstances. Factors to be considered include:

- the particular organization's size and complexity, as well as its unique goals,
- the organization's objectives and resources available at the time the decision was made,
- the urgency of the decision, and the potential risks and rewards associated with the decision;
- the information available when the decision was made; and any special knowledge possessed by a director.

As a general rule, the Board should strive to attain a balance between minimizing risks and creatively using the organization's resources.

b. Selection and Retention of Competent Management. In order to fulfill one's duty as a director, a director must rely on others. The Board will not be held responsible for the acts and omissions of those to whom authority is vested as long as the Board did not and should not have known that those individuals were not acting responsibly or in compliance with the law.

(1) Reasonable Reliance. A director must act on the basis of informed judgment. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared and provided by (1) officers or employees of the organization, if the director reasonably believes they are reliable and competent

in the matters presented; (2) legal counsel, public accountants or other individuals, if the director reasonably believes they are addressing matters within their professional expertise; or (3) a Board committee, if the director reasonably believes that its report merits confidence. Questions should be asked if a report seems inadequate, but a director is not required to personally exhaust every possible source of information before relying on the opinions of others.

(2) Ongoing Review. One way to ensure that management and Board committees are acting responsibly, in compliance with the law, and consistent with the goals of the organization is by implementing policies and procedures for review of their actions. These policies and procedures should be designed to ensure that the Board will be promptly and fully apprised of any problems confronting the organization.

(3) Circumstances Should be Considered. The circumstances will dictate the propriety of the delegation of duties and the degree of reliance on others. For example, it may be appropriate to delegate authority where the underlying matter is of relatively insignificant consequence to the organization.

2. Duty of Loyalty

The duty of loyalty means that a director must always act in the best interests of and maintain an undivided loyalty to the charity.

a. Avoid Appearance of Impropriety. The best policy is to avoid any transaction which would even suggest the appearance of preferential treatment, unfair transaction or usurpation of an opportunity for the organization.

b. Full Disclosure. If a situation arises where a director's absolute and unconditional loyalty to the organization might be questioned, that director should make full and complete disclosure to the entire Board. A disinterested Board may approve the transaction or

contract after a thorough and independent review of it to determine whether it is in the organization's best interests.

3. How to Avoid Conflicts of Interest

a. Composition of the Board. The Board should be comprised of individuals who are financially disinterested. Both "insiders" (those who are involved in the daily management of the organization) and "outsiders" (those who are unaffiliated with the organization) should be asked to sit on the Board. In addition, a Board may want to consider staggering the terms of its members.

b. Conflict of Interest Policies. The Board is required to adopt a conflict of interest policy which specifically addresses potential conflicts of interests. A sample conflict of interest policy is provided for in the sample by-laws found in **Appendix B**. A disclosure form designed to elicit information regarding potential conflicts may be created and used as a prerequisite to membership on a Board. Procedures may be implemented that regulate how conflicts are resolved.

c. Pecuniary Benefit Transactions and Prudent Investor Standards

New Hampshire has adopted laws that govern "pecuniary benefit transactions" and to set general standards governing prudent investments by an organizations' board or trustees. These laws are outside the scope of this introductory guide to the incorporation process and how to obtain tax-exempt status, but it is important to draw attention to these laws as they do play a large role for the proper management of a New Hampshire nonprofit arts organization.

First, RSA 7:19 governs "pecuniary benefit transaction" which are transactions made by an organization in which an officer, director, or trustee of charitable trusts has an interest. As such, the organization and its board must follow strict guidelines in order to

avoid penalties. Secondly, RSA 564-A:3-b provides investment guidelines for the prudent investment and management of funds.

III. FEDERAL AND STATE TAX CONSIDERATIONS

A. Introduction

Non-profit organizations may be exempt from federal, state and local taxes; the most significant of these is federal income tax. If an organization is not exempt from federal income tax, then its taxable income is generally subject to tax at corporate rates which range from 15% to 35% (in 2002). Additionally If the IRS deems an organization to be exempt from federal income tax, then the organization is also exempt from New Hampshire corporate income tax (the "New Hampshire Business Profits Tax"). Furthermore, Federal tax-exempt organizations are eligible to receive tax-deductible contributions from their supporters. Accordingly, this section of the Guide will outline the legal requirements that must be met to achieve and maintain tax-exempt status.

B. Obtaining Federal Income Tax Exemption

1. The Law

a. Organizational Purpose

The policy behind federal income tax exemption is to encourage the growth of various organizations that promote the public's general welfare. Section 501(c)(3) of the Code sets forth the largest category of tax-exempt organizations, and most arts and other service organizations are 501(c)(3) organizations. The IRS defines a 501(c)(3) organization as:

Corporations, or any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literacy or educational purposes, or to foster national or international amateur

sport competition. . . or for the prevention of cruelty to children or animals. . . . (emphasis added).

The IRS has acknowledged that organizations devoted to the promotion of the arts may qualify as being "educational" or "charitable" in nature. An organization is considered "educational" if it educates the public to the arts through publications, lectures, performances, exhibitions and other such mediums. To encourage and promote public understanding of art as well as to encourage the development of artistic talent are considered to be educational purposes. Organizations may also fall within the broad definition of having a "charitable" purpose if it conducts activities for the benefit of the general public at large.

It is important to note, however, that not only must an arts organization be "organized" consistent with these principles by virtue of its Articles of Agreement, but the organization must also be "operated" consistent with those principles. It is possible for the Internal Revenue Service to revoke an organization's tax-exempt status if the organization is not being operated appropriately.

To operate for "educational" or "charitable" purposes, the organization's activities must not be directed to advance the individual interests of the artists, but rather to benefit all the public and for the public to be educated to art. For example, an art exhibition where 90% of all proceeds were turned over to the individual artists was determined not to serve the general public, and, therefore, was not tax-exempt.

The Articles of Agreement provide the best starting point to ensure that an organization will have an "educational" or "charitable" purpose as required by Section 501(c)(3). In the Sample Articles of Agreement, Article II sets forth a broader general purpose. The more expansive the purpose is within an educational field, generally, the better off the organization. The organization will then have greater flexibility within which to operate.

In addition to the organization's affirmatively stated purposes, an organization must not allow:

1. the distribution of assets to a purpose other than an exempt purpose within the meaning of Section 501(c)(3) upon the organization's dissolution;
2. any part of the net earnings of the organization inure to the benefit of any private shareholder or individual;
3. any substantial part of the organization's activities to consist of carrying on propaganda or otherwise attempting to influence legislation;
4. participation in or intervention in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office; and
5. discrimination with respect to race, national origin, religion, color or sex in relation to the services provided by the organization.

The sample Articles of Agreement provide sample language which complies with these legal requirements.

b. Public Charities versus Private Foundations

Section 501(c)(3) organizations are divided into two subgroups: public charities and private foundations. An organization which qualifies as a 501(c)(3) exempt organization must also meet the requirements of Section 509 to be treated as a public charity. The IRS imposes stricter requirements on private foundations and private foundations are subject to greater tax liability. Most organizations, therefore, seek public charity status.

(1) Public Charities

In short, there are four types of organizations excepted from private foundation status under Section 509: (1) organizations conducting favored activities, such as a church, or those that receive a "substantial portion" of their support from the general public or governmental entities; (2) organizations receiving a "substantial amount of their support" from

the general public or governmental entities ("public support tests"); (3) organizations closely associated with other public charities; and (4) organization organized and operated exclusively for public safety.

A majority of organizations seeking exemption status will qualify by using the "public support tests" under 509(a)(2). The "substantial portion test" under 509(a)(1) is also a popular alternative. Under Section 509(a)(2) an organization must meet two financial tests - frequently referred to as the "two one-third tests." The first one-third test is met if more than one-third of an organization's support normally comes from gifts, grants, contributions, membership fees, and/or gross receipts from admissions. The second one-third test is met if less than one-third of an organization's total support comes from investment income and unrelated business income.

If an organization seeks exemption under the 509(a)(1) "substantial portion test," the organization must demonstrate that it receives a "substantial portion" (generally more than one-third) of its income from the government and public contributions and net income from unrelated business income tax.

Section 509(a)(3) provides a third, less frequently used method to qualify as a public charity. If an organization is operated exclusively for the benefit of, or to carry out the functions or purposes of another public charity, and is operated, supervised or controlled by another public charity, then the organization itself will be classified as a public charity.

(2) Private Foundations

(a) Private foundations are classified by Congress as organizations which are either self-sustaining or being sustained by a few individuals. Congress has imposed

significant operating restrictions on private foundations to ensure that private foundations are operated for an exempt purpose and to safeguard against abuse. These restrictions include:

1. a 2% (1% under certain circumstances) excise tax on investment income.
2. an excise tax on: (a) various acts of self-dealing between an organization and "disqualified persons," (b) failure to distribute a minimum amount of funds annually, (c) improper business holdings, (d) improper investments, and (e) improper expenses;
3. a tax on the termination of a private foundation; and
4. a stricter limitation on the amount of a charitable deduction for a contribution to the organization.²

2. The Application Process

An organization, with few exceptions,³ that is organized after October 9, 1969 must apply to the IRS for Section 501(c)(3) tax-exempt status and to be a public charity under Section 509(a). An organization should file the Form 1023 "Application for Recognition of Exemption" within fifteen months from the end of the month within which it was organized. If the organization files within the fifteen-month period, the tax-exempt status of the organization will apply retroactively to the date of incorporation. If the Form 1023 is submitted after the fifteen-month period, then the tax-exempt status only applies prospectively. A Form 1023 is only considered filed when it is complete. Since the IRS may request additional information from the organization, it is advisable to begin the application process early.

² In general, individuals are allowed to deduct amounts donated to public charities up to 50% of their adjusted gross income, whereas they are allowed to deduct only up to 20% of their adjusted gross income for amounts donated to private foundations.

³ For example, an organization which is a public charity with annual gross receipts of \$5,000 or less does not need to file an application with the IRS if it otherwise qualified. However, so that contributors can be assured of an income tax deduction for their contributions, an application should be filed.

A Form 1023 is provided in **Appendix C**. However, the form is periodically revised, and, therefore, it is advisable to contact the Internal Revenue Service to obtain an up-to-date copy of this form online at www.irs.gov, or by calling the IRS toll-free at 1-800-829-3676. It is also recommended that an organization obtain the IRS Publication 557 "Tax-Exempt Status For Your Organization," also available at the IRS website.

3. Completing the Application

Although the instructions to the Form 1023 are detailed, there are several parts of the Form 1023 that merit further discussion.

Part I

Question 2 - The organization must have an employer identification number. If the organization has not previously submitted an IRS Form SS-4, "Application for Employer Identification Number," then a completed Form SS-4 should be submitted with the Form 1023. Form SS-4 is provided in **Appendix D**. An organization should apply for an Employer Identification Number even if the organization does not have employees. This number is used for filing all tax information and is the equivalent of an individual's social security number.

Question 10 –The IRS uses this section to determine if the organization is properly "organized" as a Section 501(c)(3) entity. The organization must file a Certificate of Incorporation from the New Hampshire Secretary of State. A copy of the organization's Articles of Agreement also must be filed, along with a statement signed by an authorized officer certifying that the copy is a complete and accurate copy of the original.

Note: The IRS will keep whatever is sent to it. Therefore, do not send original documents.

Part II

This is the most important part of the application. It is from these answers along with Part V that the IRS will determine not only whether the organization will "operate" as a Section 501(c)(3) organization, but also whether the organization is a public charity or a private foundation.

Question 1 - The answer should outline the exempt activities for which the organization was formed. Each activity should be specifically mentioned setting forth where, when, for whom and by whom the activity is conducted. It is

important to describe what further steps are necessary for the activities to be fully operational.

Question 2 - List all sources of financial support (gifts, grants, contributions, membership fees and receipts from admission and sales) in order of size. Have in mind the financial support tests for public charity status when completing this information.

Question 3 - The answer should explain the programs that will be implemented to obtain the financial support listed in Question 2. It is important to set forth the nature and magnitude of these programs. If solicitations have already been made, representative copies should be attached to the Form 1023.

Question 4 - If the organization may have difficulty in meeting the public charity financial tests under Section 509(a), then a diverse Board of Directors should be considered. This will demonstrate to the IRS a greater likelihood of achieving public support in the future. In addition, any compensation paid to the board must be reasonable because organization's earnings may not inure to a private individual.

Questions 11 and 12 - When answering these questions, keep in mind that the goal is to achieve public participation and support.

Part III

Question 9 - Most likely, public charity status is being requested by one of the public support tests. Whether the ruling request is under answer 9(h), Section 509(a)(1) or under answer 9(i), Section 509(a)(2) depends on the nature of the financial support.

Question 10 - If the organization is a newly created arts organization, then an advance ruling period should be requested.

Part IV

If the organization has been in existence for less than one year, then proposed budgets for the next two years are also required. Compare the Support and Revenue section of the budgets with Part II, Questions 2 and 3 to make sure they are consistent. The purpose of these budgets is to determine, in the first instance, whether the organization qualifies as a public charity or as a private foundation. If the organization does not meet its projected budgets, then the IRS may reverse its advance determination as to the characterization of the organization as a public charity.

Schedule A - I

These schedules are used for special types of exempt organizations and most likely will not need to be completed.

When a newly created organization files a Form 1023 the organization should request an "advance ruling" to be deemed a public charity, by filing Form 872-C. Form 872-C is set forth in **Appendix E**. If the organization has completed a tax year of less than 8 months, the IRS cannot make a definitive ruling on such a short financial history. By requesting an advance ruling, the organization's public support computation will be based on the support it receives during the first five tax years. In addition, the organization will be treated as a public charity during the five-year advance ruling period for certain purposes, including the deductibility of contributions.

The IRS will grant a favorable advance ruling, if based on the information provided on Form 1023, it can reasonably be expected that the organization will satisfy the public support tests under Section 509(a)(2) or receive substantial support from the government or the public under Section 509(a)(1).

At the end of the advance ruling period, the organization must submit financial data to demonstrate that it has operated as a public charity. If the organization does not meet the financial tests, it is retroactively deemed to be a private foundation back to its date of its tax-exemption recognition.

An organization applying for tax-exempt status must pay an application fee of \$150 or \$500 depending on average gross receipts. IRS Form 8718 "User Fee for Exempt Organization Determination Letter Request" must be completed to determine the exact amount. This form and the check or money order are to be sent in with the Form 1023. Form 8718 is provided in **Appendix F**.

When the Form 1023 is completed, it should be sent certified mail, return receipt requested, along with Forms 8718 and 872-C to:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

4. The IRS Response

If the IRS makes an adverse determination with respect to whether an organization is a Section 501(c)(3) organization or a public charity, the organization may appeal the IRS' decision in accordance to the IRS instructions delivered to the organization with the determination. Alternatively, the organization may institute a declaratory judgment lawsuit. This second alternative will require the services of a lawyer.

C. Obtaining State Business Profits Tax Exemption

Business organizations with gross business income in excess of \$50,000 are required to file a New Hampshire Business Profits Tax return. However, if an a non-profit organization is expressly made exempt from federal income taxation, then it is exempt from the New Hampshire Business Profits Tax. No specific filing needs to be made with the New Hampshire Department of Revenue Administration.

For further information contact:

New Hampshire Department of Revenue Administration
Returns Processing Division
P.O. Box 637
Concord, NH 03302
(603) 271-2186

D. Annual Federal Tax Returns

1. Forms 990 and 990 PF

A non-profit organization that is exempt from federal income tax under Section 501(c)(3) must file an informational tax return (Form 990 or Form 990 PF) on an annual basis. Public charities use Form 990 and private foundation's use Form 990 PF. Organizations, other than private foundations, whose gross receipts are less than \$25,000⁴ do not have to file a return. The Form 990 or Form 990 PF is due on the fifteenth day of the fifth month after the close of the organization's accounting period. There is a \$20 per day penalty for each day the return is late.

2. Form 990 T

If a Section 501(c)(3) organization has income which is considered "unrelated business income," then the organization must file an income tax return on Form 990 T and pay a tax, if appropriate, at corporate tax rates. Unrelated business income, as the name suggests, is income generated on trade or business regularly carried on by the organization that is not substantially related to the organization's exempt purpose. For example, an exempt arts organization would have to pay income tax on profits it has made from manufacturing spaghetti. This tax return is also due the fifteenth day of the fifth month following the close of the organization's annual accounting period.

The policy for requiring exempt organizations to pay income tax on business income unrelated to its exempt purpose is to eliminate unfair competition with private industry. Otherwise, the tax exemption would give organizations, whose operating costs are generally lower, an advantage over their for-profit competitors.

⁴ Other organizations exempt from filing Form 990 are churches, inter-church organizations of local units of a church, a convention or association of churches or integrated auxiliaries of a church organization, schools below college level affiliated with a church or operated by a religion order, exclusively religion

Unrelated business income tax is a complex tax issue, therefore, it is recommended that each organization consult its tax advisor concerning such income.

E. Miscellaneous Tax Filings

1. Employee Withholding

Section 501(c)(3) organizations that pay wages have the same responsibilities for withholding, depositing and reporting Federal and State taxes as for-profit corporations.

However, public charities are excluded from the Federal Unemployment Tax Act (FUTA) for services rendered by employees.

2. Local Property Tax Exemptions

Status as an exempt organization for federal and state income tax purposes does not necessarily create exempt status for local property taxes. Only very narrow categories of real estate and personal property are exempt. Under NH RSA 72:23 V, real estate and personal property owned by a charitable organization and occupied and used by the organization for its exempt purposes is exempt from tax. In order to be exempt from this taxation, organization must file an annual form with the New Hampshire Department of Revenue Administration and the local tax assessor.

F. Forms

Throughout this Guide are references to the IRS forms. It is important to recognize that these forms are constantly revised to reflect new changes in the law. Therefore, the references in this Guide to specifics in any such form cannot be relied upon. Current IRS forms can be obtained on the IRS website at www.irs.gov or by calling (a toll-free number): 1-800-829-3676.

activities of any religious order, or mission societies sponsored by or affiliated with one or more churches which conducts more than one-half of its activities in foreign countries.

G. Public Inspection of Annual Return and Application for Taxes and Status

The IRS requires charitable organizations to make available for public inspection the last three years of annual returns (Form 990) as well as a copy of the organization's Application for Federal Tax Exemption (Form 1023). The organization is not required to provide or distribute its annual returns or exemption application, but it is required to have a copy available for inspection. The IRS states that the required information should normally be available on the day of the request for inspection and during the normal business hours of the organization's office. If an organization has no office, or if the office has very limited hours during certain times of the year, the required information should be made available within a reasonable amount of time (normally not more than two weeks) and at a reasonable time of the day. The IRS assesses penalties for noncompliance with this policy. Accordingly, it is recommended that each charitable organization have these materials set aside in a notebook and that the legal counsel for each organization also have a copy of these materials.

IV. THE NEW HAMPSHIRE ATTORNEY GENERAL

A. Registration with the New Hampshire Attorney General

A non-profit corporation is required to register with the Division of Charitable Trusts, Department of the New Hampshire Attorney General using Form NHCT-1 "Application for Registration of Charitable Trust." Generally, a form letter is sent from the Secretary of State to an organization when it incorporates as a voluntary corporation indicating that it may be necessary for the organization to register with the Attorney General.

The application requires the organization to provide general information to the Division of Charitable Trusts, including copies of the organization's incorporation documents; a conflict of interest policy and dissolution policy as required by state law; a recent bank statement that identifies that a separate account has been established for the organization's funds; and information identifying the organization's board members.

Form NHCT-1 is available online at ww.state.nh.us/nhdoj/CHARITABLE/char.html or upon request from the Division of Charitable Trusts. A \$25 filing fee is required along with the NHCT-1. For further information contact:

Department of the Attorney General
Division of Charitable Trusts
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3591

H. State Annual Returns

There is no annual state tax return to be filed with the New Hampshire Department of Revenue Administration. However, an Annual Report (Form NHCT-2A) must be filed with the Attorney General's Office, Division of Charitable Trusts. If an exempt organization files an IRS informational tax return (Form 990 or 990 PF), it must file this in lieu of the NHCT-2A. If an

organization files a Form 990 or 990 PF, a copy must be attached to the NHCT-2A Annual Report Certificate. Additionally, the organization must file a list of officers and directors and a conflict of interest statement indicating if any directors have received a pecuniary benefit and if any loans or sale of land were made to any board members. The Annual Report is due on the same date as the federal informational tax return.

There is a \$75 filing fee to file the Annual Report. Failure to file the Annual Report may trigger action by the Attorney General to compel compliance.

Non-profit organizations that anticipate utilizing the services of professional fundraisers should contact the Attorney General for information on registration and reporting requirements.

APPENDICES

APPENDIX A SAMPLE ARTICLES OF AGREEMENT

STATE OF NEW HAMPSHIRE

ARTICLES OF AGREEMENT
OF
OVER THE RAINBOW, INC.

A NEW HAMPSHIRE NON-PROFIT CORPORATION

THE UNDERSIGNED, BEING ALL PERSONS OF LAWFUL AGE, ASSOCIATE UNDER THE PROVISIONS OF THE NEW HAMPSHIRE REVISED STATUTES, ANNOTATED, CHAPTER 292 BY THE FOLLOWING:

(The state statute requires that at least five people over the age of 18 associate together by Articles of Agreement to form a non-profit organization.)

ARTICLE I NAME

The name of the corporation shall be: OVER THE RAINBOW, INC. (hereinafter the "Corporation").

(The corporation can use any name which is not in use by another corporation or company. The name need not include the word "incorporated," "corporation" or "limited" or any abbreviation of one of the words.)

ARTICLE II PURPOSES

Said corporation is organized exclusively for any purposes for which an organization may be exempt from federal taxation under Section 501(c)(3) of the Code including for such purposes the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code, or corresponding section of any future federal tax code.

(New Hampshire statutes limit the purposes for which a corporation can be formed under Chapter 292. The corporation may state purposes broadly, as above. The language concerning distributions to 501(c)(3) organizations is necessary to qualify the corporation for tax-exempt status.)

**ARTICLE III
PLACE OF BUSINESS**

The address at which the business of this corporation is to be carried on is: 1 Pipedream Road, Portsmouth, N.H. 03801.

(State law requires disclosure of the address where the corporation's business will be carried on, not the address where meetings will be held or records kept, unless they are one and the same.)

**ARTICLE IV
BOARD OF DIRECTORS**

The affairs of the Corporation shall be managed by the Board of Directors, the initial members of which shall consist of the five (5) incorporators and such other persons as may be chosen by them, all in accordance with the Corporation's Bylaws and in a manner not inconsistent with these Articles of Agreement, the Code and with the provisions of RSA 292, as amended.

**ARTICLE V
MEMBERSHIP**

The Corporation shall not have any members.

(If the corporation does have members, the article should provide for that membership.)

**ARTICLE VI
CAPITAL STOCK**

The amount of capital stock, if any, or the number of shares is:

(The corporation may have capital stock, but it need not. Stock is evidence of ownership of the corporation, and ownership of a 501(c)(3) corporation is relatively meaningless upon dissolution of the corporation. Stockholders will not get money for the stock because the assets of a dissolved 501(c)(3) corporation must be distributed to another 501(c)(3) corporation. In addition, corporations selling stock must be sure to comply with complicated state and federal securities laws. On the other hand, selling stock may be a convenient way of raising money or transferring ownership. If the corporation does have stock, this Article should state the total number of authorized shares and their par value, if any.)

**ARTICLE VII
DISSOLUTION**

The provisions for disposition of the corporate assets in the event of dissolution of the corporation are:

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt exclusively for the purposes of the Corporation in such manner or to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at any time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

(This language is included to qualify the corporation for federal tax-exempt status.)

ARTICLE VIII LIABILITY OF TRUSTEES OR OFFICERS

The Directors and Officers of the corporation shall not be personally liable for any debt, liability or obligation of the Corporation. To the fullest extent now or hereafter permitted by law, no Director or Officer shall be personally liable to the Corporation or to its shareholders for monetary damages for breach of their fiduciary duties as an officer.

(The corporation may limit its officers' and directors' liability to the corporation so long as those officers and directors do not breach their duty of loyalty, act in bad faith, intentionally violate the law, or derive improper personal benefits from the activities of the corporation. Such a limitation of liability must be included in the Articles of Agreement.)

ARTICLE IX GENERAL PROVISIONS

1. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.

2. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

3. Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Code, or corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code, or corresponding section of any future federal tax code.

(This section prohibits the corporation from taking certain actions which would disqualify it from receiving tax-exempt status, for instance, political campaigning.)

**ARTICLE X
AMENDMENTS**

These Articles of the Corporation may be amended or repealed at any meeting of the Board by a majority vote of the Board; provided, however, that written notice of the proposed change shall be specified in the notice of the meeting, and provided further that no such action shall be taken, or if taken, shall be a valid act of the Corporation, if that action would in any way adversely affect the Corporation's qualification under Section 501(c)(3) of the Code.

**ARTICLE XI
INCORPORATORS**

The signatures and post office addresses of each of the persons associating together to form the corporation are set forth below:

<u>Signature and Name</u>	<u>Post Office Address</u>
1. _____ Signature	_____ Street
_____ Name (please print)	_____ City/Town
2. _____ Signature	_____ Street
_____ Name (please print)	_____ City/Town
3. _____ Signature	_____ Street
_____ Name (please print)	_____ City/Town
4. _____ Signature	_____ Street
_____ Name (please print)	_____ City/Town
5. _____ Signature	_____ Street
_____ Name (please print)	_____ City/Town

(Under state law, the signatures and post office addresses of the incorporators are essential to formation of the corporation.)

**APPENDIX B
SAMPLE BY-LAWS⁵**

BY-LAWS

OF

OVER THE RAINBOW, INC.

**ARTICLE I
NAME**

The name of this corporation shall be OVER THE RAINBOW, INC. (hereinafter the “Corporation”). It shall be a non-profit corporation organized pursuant to NH RSA Chapter 292.

**ARTICLE II
OFFICES**

The principal office of the corporation in the State of New Hampshire shall be located in Portsmouth, New Hampshire. The corporation may have such other offices, either within or without the State of New Hampshire as the Board of Directors may designate or as the business of the corporation may from time to time require.

**ARTICLE III
MEETING OF INCORPORATORS**

1. There shall be a meeting of the Incorporators, upon filing the Articles of Incorporation with the State of New Hampshire. The Incorporators shall act to appoint a Board of Directors.

(The Incorporators are the five people who signed the Articles of Agreement. Those five people elect the Board of Directors and can elect themselves.)

2. Notice of Meeting.

Written or printed notice stating the place, day and hour of the meeting and, in the case of special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the Officer or persons calling the meeting, to each incorporator.

⁵ By-laws can also provide for membership and the duties and powers thereof. For sample by-laws which provide for membership, see [Phelan Nonprofit Enterprises](#).

**ARTICLE IV
MEMBERSHIP**

The Corporation shall not have any members.

(If the corporation does have members, the article should provide for that membership.)

**ARTICLE V
BOARD OF DIRECTORS**

Section 1. General

The Board of Directors shall consist of not less than five (5) Directors and not more than eight (8)(the "Board"). The Corporation's incorporators shall select the initial Board. When the term of any member is about to expire, the vacancy shall be filled by a majority vote of the Board of Trustees at the annual meeting after consultation with a nominating committee. The individual Board members shall continue to serve until the remaining Board members appoint a successor member or until a Board member is unable or unwilling to serve.

Section 2. Control and Power

The Board shall have the exclusive control and power to manage the activities, property and affairs of the Corporation and shall determine the manner in which the funds of the Corporation, both principal and income, shall be applied within the limitations of the Corporation's Articles of Agreement, these Bylaws, the Code and Chapter 292 of the New Hampshire Revised Statutes Annotated.

Section 3. Meetings

The annual meeting of the Board shall be held at such place and time as determined by the Board in the month of (month). Regular and special meetings of the Board, or any committee thereof, shall be called by the President or at the request of two-thirds (2/3) of the membership of the Board and shall be held at such time and place as may be set forth in the notice thereof, provided that at least five (5) days' advance notice (in writing or otherwise) of every meeting shall be given to each Director or member of a committee. Such notices shall be sent to the addresses shown on the records of the Corporation. Any Directors may waive notice of a meeting by an instrument in writing filed with the records of the meeting or attendance at the meeting without protest.

At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise expressly required by the Corporation's Articles of Agreement, these Bylaws or Chapter 292 of the New Hampshire Revised Statutes Annotated. If a quorum is not present at any meeting of the Board, the Directors present may adjourn the meeting from time to time, without notice other than announcement, until a quorum shall be present or available.

Section 4. Committees

The Board may designate one (1) or more standing committees, by a resolution(s) passed by a majority of the Board. Such committee(s) shall consist of two (2) or more Directors and shall have such powers and duties as the Board deems desirable.

Section 5. Removal

Any Director may be removed with or without cause at a meeting of the Board duly called for such purpose by a two-thirds (2/3) majority vote of the disinterested members of the Board.

Section 6. Resignation

Any Director may resign at any time by giving written notice to the President or the Secretary. Any such notice shall take effect as of the date of the receipt of such notice or at any later time specified therein.

Section 7. Vacancies

If the office of any Director shall become vacant by reason of death, resignation, disability, retirement, disqualification, removal from office, or for other cause, the remaining members of the Board, even if less than a quorum, shall elect a successor(s) for the unexpired term of such Director.

Section 8. Compensation; Reimbursement

(This paragraph would identify that no Director is to receive compensation for services or would identify the compensation if provided. Remember compensation must be reasonable to prevent an adverse determination by the IRS.)

ARTICLE VI OFFICERS

Section 1. General

The Corporation shall have as executive officers a President, a Secretary and a Treasurer, each of who shall be appointed by the Board.

Section 2. President

The Board shall elect the President. The President shall preside over meetings of the Board of Directors and shall be responsible for the agenda and general conduct of such meetings.

He/she will represent the Corporation at local, civic, and community activities which require the Corporation's attendance.

Section 3. Secretary

The Secretary of the Corporation shall be elected by the Board and shall keep the minutes and records of the Corporation in appropriate books, see that all notices are given in accordance with these Bylaws or as provided by law, keep the seal of the Corporation and affix same to corporate documents, and in general, perform all duties incidental to the office of Secretary and such other duties as may be assigned by the President for the Board.

Section 4. Treasurer

The Treasurer shall be elected by the Board and shall keep correct and complete records of account accurately showing at all time the financial condition of the Corporation. Subject to the direction of the Board, the Treasurer shall be the legal custodian of all funds of the Corporation, shall keep a detailed account of its income and expenditures, and shall be responsible for payment of all expenditures of the Corporation.

Section 5. Removal

Any officer may be removed without cause, from such office by a two-thirds (2/3) vote of the majority of the disinterested members of the Board at a meeting of the Board called for such purpose.

Section 6. Resignation

Any officer may resign at any time by giving written notice to the Board or to the President or the Secretary of the Corporation. Any such notice shall take effect as of the date of the receipt of such notice or at any later time specified herein. The acceptance of such resignation shall not be condition precedent necessary to its effectiveness.

Section 7. Vacancies

In the event of resignation, retirement, disqualification, death, disability or removal from office, for any reason whatsoever, of any officer of the Corporation, the vacancy so created shall be filled by the Board.

**ARTICLE VII
GENERAL PROVISIONS**

Section 1. Corporate Seal

The Board of Directors may authorize a corporate seal which shall have inscribed thereon the name of the corporation and the state and year of incorporation.

Section 2. Fiscal Year

The fiscal year of the Corporation shall end on the last day of December in each year unless otherwise determined by the Board.

Section 3. Indemnification

The Corporation shall indemnify each of its Trustees and officers, or former Trustees and former officers, or any person who may have served at the request of the Corporation as a Trustee or officer of another corporation, partnership, joint venture, trust, or other enterprise, to the fullest extent permitted by law.

**ARTICLE VIII
AMENDMENTS**

The By-Laws may be altered, amended, or repealed and new By-Laws may be adopted by a majority vote of the directors present at the annual meeting. However, in no event may any amendments be made which would affect the corporation's qualification as a tax-exempt organization pursuant to Section 501(c)(3) of the Code or corresponding section of any future federal tax code.

**ARTICLE IX
NON-DISCRIMINATION**

The corporation shall not discriminate against any person in any manner on the basis of sex, race, age, religion, handicap or ethnic origin.

**ARTICLE X
LIMITATION OF LIABILITY**

Unless otherwise expressly authorized by the Board, the directors and officers shall serve without compensation and, pursuant to Section 508:16 of NH RSA, shall not be liable for bodily injury, personal injury and property damage if the claim for such damages arises from an act committed in good faith and without willful or wanton negligence in the course of an activity carried on to accomplish the purposes of the corporation.

The Directors and officers of the corporation shall not be liable to the Corporation or to its shareholders for monetary damages for breach of their fiduciary duties to the full extent permitted by N.H. RSA Chap. 292.

(The corporation may limit its officers' and directors' liability to the corporation so long as those officers and directors do not breach their duty of loyalty, act in bad faith, intentionally violate the law, or derive improper personal benefits from the activities of the corporation.)

**ARTICLE XI
INDEMNIFICATION**

The corporation shall indemnify and hold its directors and officers harmless from and against all suits, claims, injuries, or damages asserted against them, so long as the director or officer to be indemnified has not acted in bad faith or engaged in intentional misconduct, knowing violation of the law, or derived an improper personal benefit.

**ARTICLE XII
CONFLICTS OF INTEREST**

Any possible conflict of interest on the part of any member of the Board, officer or employee of the Corporation, shall be disclosed in writing to the Board and made a matter of record through an annual procedure and also when the interest involves a specific issue before the Board. Where the transaction involving a board member, trustee or officer exceeds five hundred dollars (\$500) but is less than five thousand dollars (\$5,000) in a fiscal year, a two-thirds vote of the disinterested directors is required. Where the transaction involved exceeds five thousand dollars (\$5,000) in a fiscal year, then a two-thirds vote of the disinterested directors and publication in the required newspaper is required. The minutes of the meeting shall reflect that a disclosure was made, the abstention from voting, and the actual vote itself.

Every new member of the Board will be advised of this policy upon entering the duties of his or her office, and shall sign a statement acknowledging, understanding of and agreement to this policy. The Board will comply with all requirements of New Hampshire law in this area and the New Hampshire requirements are incorporated into and made a part of this policy statement.

**ARTICLE XII
DISSOLUTION**

Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for or the payment of all liabilities of the Corporation, shall distribute the assets for one or more exempt exclusively for the purposes of the Corporation in such manner or to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at any time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

APPENDIX C
FORM 1023, APPLICATION FOR RECOGNITION OF EXEMPTION

APPENDIX D
FORM SS-4, APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER

APPENDIX E
FORM 872-C, CONSENT FIXING PERIOD OF LIMITATION UPON
ASSESSMENT OF TAX UNDER SECTION 4940

APPENDIX F
FORM 8718, USER FEE FOR EXEMPT ORGANIZATION

M:\DATA\3\39785\rac\00160140.DOC
January 17, 2003 9:00 AM