

Charity Therapy 142:

Someone Get Me a Flux Capacitor! What Happens When Your Nonprofit IRS Status is Revoked

Jess Birken 00:00:02 Welcome to Charity therapy, the podcast where we explore the ups and downs of the non-profit sector and answer your burning questions. I'm your host Jess Birken. Owner of Birken Law office and I'm excited you're here. Imagine hanging out with me and my super smart, funny, nonprofit expert pals. You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough questions I ain't scared. Ready to rock? Let's dive in. Hello and welcome to this episode of Charity therapy. I am back with my co-host Megan, and I have lost my sense of object permanence.

Meghan Heitkamp 00:00:51 Hello, hello. Also, we're talking about something that's existing on a screen. So the idea of an object permanence, applying to a script on a screen feels questionable to me. It literally is not a 3D object in space.

Meghan Heitkamp 00:01:05 Our brains don't know what to do with that.

Jess Birken 00:01:08 I have lost my mind. I have lost my ability to scroll. I've lost my ability to introduce my own podcast. What day is it? What time is it? What year is it? Somebody give me a flux capacitor. I need to go back to 1968 for the dance.

Meghan Heitkamp 00:01:23 Exactly. Exactly. That's exactly what the vibe is today.

Jess Birken 00:01:29 That was back to the future reference for those of you who don't.

Meghan Heitkamp 00:01:32 Yes. Very important.

Jess Birken 00:01:33 Oh, okay. I do not think it was 68, though.

Meghan Heitkamp 00:01:36 I don't know, I.

Jess Birken 00:01:37 Should I think it was like late 50s. We should know. We really should Google this.

Meghan Heitkamp 00:01:41 Are we gonna?

Jess Birken 00:01:42 Probably not. Anyway, what we should do is probably talk about non-profit stuff.

Meghan Heitkamp 00:01:46 Yeah, that's why you're here. And also why we're here. So let's let's do that. So just I have obviously a listener question for you as we do. But before we do that, I do have a question for you.

Meghan Heitkamp 00:01:57 So you can tell us all how it works. So we work with a lot of folks who have lost their tax exempt status along the way. And usually that happens because they are not filing their required filings. So tell me what that looks like. How does that actually happen?

Jess Birken 00:02:12 Yeah. So every year since 2009, every nonprofit supposed to be filing a 990. It's an information return. You send it to the IRS. It gives information about your nonprofit and its public record. And it's a small requirement in exchange for income

tax exemption. If you don't file your 990 in the first year, nothing bad will happen. If you don't file it for two years, nothing bad will happen. But on the third, it's three strikes and you're out on the third time that you don't file your 990. The IRS computer system will notice there is nothing filed for this organization three times in a row, and they will revoke your status. It's called auto revocation. Automatic revocation. There's nobody. It's not like somebody decides there's nothing to, like, appeal, generally.

Jess Birken 00:03:08 It just is. The computer kicks it out and you're done, and then you have to reapply.

Meghan Heitkamp 00:03:14 Yes. And in theory, there are other ways you can lose your tax exempt status. But this is the most common one that we see for sure.

Jess Birken 00:03:23 Well, I mean, you could you could have the IRS take it away, like, because you're subject to some sort of investigation. That's certainly a punishment that they have open to them. But like we rarely see that. It's much more common that you're just auto revoked for not filing.

Meghan Heitkamp 00:03:42 Okay. So shocking. No one. We're going to talk about some more revocation things with this listener question. So I'm going to jump right into it. I just joined a board about three months ago, and today I found out that there are 501. C3 was revoked last year due to not filing their taxes last year. A board member is working with the person who was supposed to be handling this, but they have yet provided any update for us. We have a community cleanup event coming up where we're partnering with a different community organization, and I'm really worried about this.

Meghan Heitkamp 00:04:15 Can we still do this event without our status? Are we opened up to more liability? Do we need to have different insurance help?

Jess Birken 00:04:23 Okay. You know, in our last episode, we were talking about Uncle Larry, and I feel like Uncle Larry's got another job. A board member is working with the person who was supposed to be handling this, but they have yet to provide any updates.

Meghan Heitkamp 00:04:40 This being filing their nine 90s and dealing with the revoked status.

Jess Birken 00:04:46 This is. They don't say this, but it smells very much like an Uncle Larry was going to do our 990 for free. And if you know any public accountants, They are all dying since 2020. Every CPA, an accountant or EY I know is dead. Yes. I mean, they are so tired. And guess. Guess when most nonprofit tax filings are due May 15th. Does that sound like a good time to be preparing your nonprofit's filing? 30 days after regular tax preparation is done? No. So the reading between the lines here is that they've got somebody who volunteered to do this, and it's their absolute last priority.

Jess Birken 00:05:33 They probably forgot to do it. And the board is not really paying attention. Not following up, not making sure it happens. And the listener says they got revoked last year for missing a year. But as we just discussed. Yeah, I, I happen to know that they did not file for three years in a row. So this is a little bit of a bigger problem than one. 990 is not prepared yet, right?

Meghan Heitkamp 00:06:04 If there really was just one 990 filed or filing missing nothing, they wouldn't have been revoked. They could file that back 990 and continue on like that.

Jess Birken 00:06:17 You get revoked on the third try on the third time. So they have not had their poop in a group, as it were, for three years, and now they're auto revoked. Probably they sent a message to Uncle Larry or whoever was volunteering to do this to say, where are we at? We got an auto revocation and now that person is going, oh.

Speaker 3 00:06:40 Oh, oh, shoot.

Jess Birken 00:06:41 I messed up.

Meghan Heitkamp 00:06:41 Yep. But really, we've said this on other podcast episodes before. Sure, Uncle Larry messed up, but really, the board has messed up because it is the board's responsibility to make sure that this gets filed. Child. There is no such thing as delegating it to one person to handle all of this, and everybody else's hands are clean. Everybody needs to know that this is a required annual filing and that it gets done. So if the person who's in charge of working with Uncle Larry never gives a report, it's up to the board to be like, hey, what's going on with that? I think we need to do that.

Jess Birken 00:07:19 Yeah. Just because you delegated something doesn't mean it's not still your responsibility. Like if you've ever been a manager, you delegate things to your team. And when it gets screwed up, who's the person responsible? You are. That's how boards work, too. You can't just be like, oh, yeah, we gave that to the accountant. Yep. It's done.

Jess Birken 00:07:40 No, you need to actually review it before it gets filed. Talk to them. Do your due diligence, understand what's going on, and then follow up and be like, we need proof of filing. That would be the appropriate flow of events. So let's get into their actual concern, which is the community cleanup event that's about to happen, where I assume this is some kind of fundraiser. I mean, it's hard to tell, but it feels like maybe it's got some fundraising element. We're cleaning up with volunteers, maybe picking up trash. Maybe there's some sort of fundraising that's going to happen along with this event. If there's no fundraising and it's just volunteers doing stuff, great. But as far as receiving donations right now, this organization is no longer tax exempt. You cannot continue to say we are a 501 C3. I'm assuming you can't say that because you don't actually have that status. The IRS took it away. So can you do the event without our status? Is the question and the I don't know, because I don't have enough information if it's volunteers or just doing something.

Jess Birken 00:08:56 We're all going to wear bright orange vests and carry garbage bags, and walk the side of the road in the spring and clean up the roads. No donations will be requested. Go ahead. If this is some sort of fundraiser and you're seeking donations, or maybe people are like however many miles we clean up, you're going to match my effort with a donation of a dollar per mile or like, okay, like now we're starting to have a little bit of a problem because those donations are at risk, right? And that then that starts to lead into are you even allowed to solicit donations based on your state law because you're no longer a C3? You can't hold yourself out as one. Are you out of compliance with your state attorney general's office, too? So I don't know if you can have the event. It kind of depends

on what's going on. Then the listener says, are we open to more liability? Well, from a compliance perspective, yes. Like you're you're supposed to take care of this.

Jess Birken 00:09:57 The board is supposed to make sure all of this is done right. Are we open to more liability? I mean, that's kind of a it's a weird way to frame that. I think the like, lawyer answer is the organization has risk right now because it it's lost its tax status. And that could affect our fundraising. Is the event more risky. No. And the same amount of risk. Let's just assume it's community cleanup and everybody's carrying a garbage bag. I think we can all make sure that there's no additional risk as far as the activity is the activity. If people are walking along the side of the road, there's a risk they're going to get run over by bus on the on the road. That risk is the same whether you have income tax exemption or no income tax exemption. If your volunteers do something wrong and they get sued, if your state provides volunteer immunity, They're still volunteers. You're still a non-profit corporation. So, like, the liability for the event is pretty much the same.

Jess Birken 00:11:02 It's just that your ability to fundraise and stay in compliance with the government agencies who bless your activities is in jeopardy right now. So it's not like really a question of, like, more liability. Well, if your board doesn't do anything, they could be liable, I guess. Is that where you're going?

Meghan Heitkamp 00:11:20 No, I was just going to say that I think this really underscores common misconception about nonprofits. And like reading between the lines, I have a feeling this listener has this question that a nonprofit is its tax exempt status, that like, if you don't have C-3 status, every single thing grinds to a halt. Everything that was like in place before is now null and void. All of our insurance is canceled. We are not allowed to have this money that we already have in the bank. All of our activities have to stop because we are no longer a nonprofit. And it's it's.

Jess Birken 00:11:56 That's that's great perspective.

Meghan Heitkamp 00:11:57 And I think that it's important to kind of like pull out what you were already saying.

Meghan Heitkamp 00:12:02 But in very direct terms, the nonprofit still exists, you still have your board, you still have your insurance policies, you still have all of these things. It changes the way that you can fundraise, and it changes the way that you have to communicate to your constituents and everything else. But it doesn't mean that you just like, don't exist anymore.

Jess Birken 00:12:22 Yeah, maybe the easiest way for people to wrap their brains around this is the 501 C3 is a tax filing status. It's not your right to exist. There are nonprofits that exist and pay taxes. Your corporation. You exist in your state. When you file your personal taxes, you file as single or married or head of household, right? Those are tax filing statuses that affect what your tax rate is. The 501 C3 status is the equivalent of your you used to file as married. Then you got divorced, and now you file as single and you no longer get certain deductions that married people get. So you were filing as a C3, and now theoretically you would.

Jess Birken 00:13:17 Your organization would pay tax because you don't have that status anymore. Now, I'm not saying you should do that. You should reapply and get your status back. So I'm not sure that the IRS like, will even understand how to process your your return. And you may not owe any taxes in the first place if you tried to pay them, but you lost your status with the IRS. You just need to apply to get that label. It's just a label. It's just like, are you married? Filing jointly. Are you married? Filing separately? Are you a 501 C3. Are you a 500 and 1C6 like? Which one are you filing? As you just need to get your label back.

Meghan Heitkamp 00:14:00 Yeah. It's like the label matters. It's just not everything. And I think that because it is often a smaller organization that is a little bit flying by the seat of its pants, that loses its tax exemption in this way. There is not only, you know, a lack of understanding about what that C3 status actually is, but also when the C3 status goes, it's likely that other things may have also fallen by the wayside.

Meghan Heitkamp 00:14:25 Oh yeah. So it's really easy to just be like, everything is null and void. Everything is bad, everything is falling apart and it might all be falling apart. I don't know what else is going on in your organization, but the C3 status itself is not necessarily the cause of all of these problems, you know? So it's just sort of like this is one element. It's an important element, but it's not the only element.

Jess Birken 00:14:46 Right. So they're like, oh do we need different insurance now. No.

Meghan Heitkamp 00:14:50 But like.

Jess Birken 00:14:51 I don't think.

Meghan Heitkamp 00:14:51 So. Already had insurance to cover this event. Well, right. Maybe you didn't. I don't, and then. Yeah, you you are at risk. But that would have been true regardless of your C3 status.

Jess Birken 00:15:01 Yeah. To your point, Megan, you might want to check your insurance policies because. Are they lapsed? Because this is usually a canary in the coal mine. You're so right that like, if this goes usually we start peeling the onion and it's like, oh, and the corporation has been administratively dissolved and hasn't had, you know.

Jess Birken 00:15:22 Oh, and we aren't registered with the attorney general for fundraising. Oh, and our work comp policy lapsed and we're flying blind. Like there's probably other things that are not in place, but losing your tax exempt status doesn't make you need insurance. That's different. Yes, if that makes sense. Yeah.

Meghan Heitkamp 00:15:41 Okay.

Jess Birken 00:15:42 Well, what did we learn here today?

Meghan Heitkamp 00:15:44 I've got a few. So first your tax status, whether it's 501 C3 or something else does not make you a nonprofit or not. It's not the only thing that makes

you exist. So when there are changes or revocations to a tax status, there is still a nonprofit that exists, and it is now the name of the game is getting that label back. So it's important to understand what your status really is. Secondly, nonprofits sometimes have their IRS status revoked because they do not file their nine 90s three years in a row. That is the most common situation when a nonprofit loses its status and something that we see somewhat frequently. So this if you are looking at coming up on year three of not filing, now is your time to get that handled before you are automatically revoked.

Meghan Heitkamp 00:16:37 And lastly, I think the big one is that delegation does not absolve you from your responsibility to the organization. If you as a board member have fiduciary duties, that means that you are responsible for making sure these filings get done. Even if you know your board president sister is an accountant who's going to do it for free on the side. And we've already handed it off to her like, great. It's it's your responsibility to make sure that you follow up and that it actually got filed. So, delegation is great, but does not mean that you have no responsibilities towards the nonprofit.

Jess Birken 00:17:16 Yeah. I would just add, like, try not to beat yourself up. Like, yes, we see this so many times with small nonprofits like it Happens, nobody joins an organization because they're really excited about compliance. Like you're you're doing your best. You figured out that this was a problem and now you're going to fix it. Focus on that. Don't kill yourself. You just like, go forward. Do better for next time.

Jess Birken 00:17:45 It's going to be a little painful and annoying to fix everything and just use that to make systems that this doesn't happen again. But try not to, like beat yourself up too much.

Meghan Heitkamp 00:17:56 This is just proof that running a nonprofit isn't easy. And so you are not alone in this.

Jess Birken 00:18:02 That's right, that's right. Well, folks, if you want to be not alone in this, you know, what you could do is share this episode with your friends and talk about it. Maybe you should even have a charity therapy podcast.

Meghan Heitkamp 00:18:14 Listening.

Jess Birken 00:18:15 Party. Is that.

Meghan Heitkamp 00:18:15 A thing? We can just like.

Jess Birken 00:18:16 Listening.

Meghan Heitkamp 00:18:17 Party.

Jess Birken 00:18:18 Look at you with your correct.

Meghan Heitkamp 00:18:19 I mean I made that up. I don't know if that's a thing, but.

Jess Birken 00:18:22 No, I think I think that's a thing. That's definitely a thing. If you liked it, give us five stars. Subscribe. Click all the buttons. Thank you so much. And as always, thank you for listening to the end. We appreciate you and we'll see you next time.



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

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