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## What Happens When Your Nonprofit IRS Status is Revoked – Transcript

Jess 00:00:02 Welcome to Charity therapy, the podcast where we explore the up and down of the non-profit sector and answer your burning questions. I'm your host, Less Virgin, owner of Virgin Saw 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 witty 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. To get ready to join the conversation and bring me the tough questions I ain't scared. Ready to rock? Met's dive in. Hello and welcome to this episode of Charity therapy. Began and I are here to answer another listener question for you today.

Meghan 00:00:51 Hello, hello. Surprise, surprise. Because we do so many other things on this podcast other than answering listener questions. Well.

Jess 00:00:59 Listen, if all we talked about was legal stuff.

Meghan 00:01:02 It'd.

Jess 00:01:02 He boring. That'd be boring.

Meghan 00:01:04 I want the juice loss. Like, that's how its fun is the like, you know, anonymized, juice gossip. It's half the fun.

Jess 00:01:11 That's right. Yeah. That do we gossiping about today, Began?

Meghan 00:01:14 Well, today, first of all, we talk all the time about how nonprofits are, like, way more complicated to run or to manage than a small for profit business. Yeah, and that's very true. But, like, let's talk about why that is. And so today let's talk about like compliance obligations for nonprofits. To just for a nonprofit, what kinds of things do they need to do every year in order to stay in good standing?

Jess 00:01:43 Oh, my. I was born in 1978. Brain just said, don't hang up. I swear, I swear to God, we'll still make this entertaining. Were's the thing. Nonprofits are so different from regular companies. Most people start a business. They start it as a single member LLC. It's one person that's considered a disregarded entity for tax purposes, meaning you don't have to file any special tax forms.

Jess 00:02:11 You just file your regular tax form and tell TurboTax you have a business and like, list your expenses and you're done. Whatever. Nonprofits are way more complicated. They have a special tax form. Sometimes people think they don't have to file taxes because they won't owe anything, but that's not actually true. You need to actually file a 990 information return. And the more money you get, the more complicated that becomes. And once you're making more than \$50,000 to \$200,000 a year, you definitely need to have an accountant. There's no TurboTax for you. To that's one thing. And then if you're asking for money, people want to know about that. To usually the state attorney general or different. And I think in Wisconsin it's like the Department of Finance. Why is it called that? I don't know, but there's usually a state agency that cares about who you're how you're soliciting their citizens. The attorney general's office is usually there for consumer protection. And so they want to protect the consumers from scanty fly by night people claiming to be charities who aren't.

Jess 00:03:19 And so there's a lot of like compliance around registration for fundraising. When if you use a professional fundraiser or professional fundraising company, there's compliance around that. That else? There's just just like anything you can do with the for profit you can do with a nonprofit, but it probably has special rules. To if you want to hire people, there's special rules about how much you can pay them and is it reasonable and had had had. Of you want to hire one of your board members or pay them to do like maybe the bookkeeping, they're also a board member, but they're also going to do the bookkeeping and you want to give them a spend. Well, now we're into conflicts of interest and insider trading.

Guest 00:03:57 And A la la la la la la.

Jess 00:03:59 To there's just like a million rules that regular business do not have.

Meghan 00:04:03 Yeah. To what I'm hearing is there's a couple of things that all nonprofits probably need to do as like a vaseline that is more complicated than for profits. But then there's also a whole bunch of stuff that could kick in at any given time that you might not know exists until you're already in it.

Meghan 00:04:19 And it's you don't realize it'll be more complicated because there's no perfect handbook saying like, if this, then you have to do that. You know, it's all complicated.

Jess 00:04:30 His is here's the thing. His is like the bane of every paralegal or associate that we've had at the firm. Yeah, I feel like this is why nobody wants to do this practice area, because it's so dynamic in the sense that when you have federal law, you have your 501 Of status, or you have your 500 1C4, or you have five, 1C5 or your 516 or your 51C7, and guess what? Each of those different vehicles of a tax exempt entity has all different things that apply to them and make them a certain way. And then you have what state are you in? And the state usually has non-profit laws. And then you have, oh, are you actually raising money from other states too? Well guess what. He have to protect those consumers. And now you are subject to these laws. And it's just like this never ending, like pop up, like hack a mole of what are we doing? And what decision tree are we using to figure out what applies here?

Meghan 00:05:27 Yeah.

Meghan 00:05:27 Rep. Absolutely. That makes sense. To if you are feeling overwhelmed in the administration of your organization, you're not alone. It's okay. You're not alone. Yeah. And let's jump into the listener question because this is going to talk directly to those people. To they write in and say, I have no background in nonprofits, but I've just taken on what is essentially the treasurer role, for one, as a favor, a favor to my family member. The problem is they haven't run the lightest ship the main bank.

Meghan 00:05:57 Account.

Meghan 00:05:57 Is under her deceased mother's name, who acted as the board of directors until 2005, when she passed. Is it is 2025 when we are recording, any and all forms haven't been filed since oh five, but they've been running as usual. Our corporate registration is showing up in our state's database under her deceased mother's name, but I can't figure out how to update any of it. I'm wondering if I should just create an entirely new nonprofit and transfer the asset somehow. I'm still in contact with the president, but they had no idea any of this is the way it is, because they had trusted the previous treasurer to handle it properly.

Jess 00:06:36 There's the sad trombone sound effects? Because I was like the first sentence, I was like, oh, and then the second sentence, I was like, oh, and it just gets worse. To, okay, there's a bunch of stuff that we don't actually know. That would be really helpful for me right now. First of all, I don't know what they're what state they're

in, so that makes it a little tough. I also like they don't say if they ever had 501 C anything. Status like that seems like an unspoken thing in this question.

Meghan 00:07:10 Yeah. Since this person isn't familiar with nonprofits, it may be something they don't even know to ask, but 100%. I feel like if they are calling it a nonprofit, they are assuming there is some sort of status.

Jess 00:07:22 Yeah, I think assuming being the operative word there. Okay, so this first sentence, I have no background in nonprofit. That's fine. Most people who join a board don't. Right. Most lawyers don't. Most everybody doesn't.

Jess 00:07:36 And then you jump in onto the board and you step up to be the treasurer, which I'm sure is really needed. And bless you for doing so. However, if I can just use this moment as a PSA for everybody joining a board, I think we even have like an article or something about, like the due diligence you should do before you join a board. He should link that in the show notes, because really, you wanted to check on some of these things before you signed up for personal liability with the organization. But most people don't know to do that, so I'm not blaming the listener at all. It's just like, if I can reach anyone at the point where they are about to join a board and you're hearing this like, do the research, do your own research first, and we have a little guide and you can get that on our webster. Okay. To new treasure comes on. Problem is they didn't run the Titus ship. Well, if I had a dollar for every time I heard that right.

Jess 00:08:38 Like that's okay. His happens all the time. Now we get into the problems though. The main bank account is under her deceased mother's name. Okay, that is a problem because no person owns a nonprofit. To since no one owns the nonprofit, you can't have a bank account that's owned by a person. You're supposed to have a bank account that's owned by the charity. Now, this is not the end of the world. You can open a new bank account. But I would think that this bank account is probably opened with the tax of number of the dead. Tom. His is going to get really weird because I'm just going to keep talking about this dead mother. To dead mon opened a bank account in her name with her tax of number, which means an entirely new bank account probably needs to be opened for the nonprofit, but okay. When it goes on to say dead mon also acted as the board of directors until 2005, when she passed away. Now, here's where we don't know what state they're in, but unless they're in Delaware, they probably need to have more than one director.

Jess 00:09:54 To we'll just we can, like, just sweep swish. That's the sound of this fact going under the rug, because now it sounds like we have at least three people on the board. Which is better? To matter what your state's rule is, you should probably have at

least three people on the board, and then the listener says all of their forms, whatever they are, haven't been filed since 2005. To that's 20.

Meghan 00:10:20 Years.

Jess 00:10:22 But they've just been operating like nothing, you know, like, hey, we're charity, we're doing our thing. To somehow the corporate registration is still alive. Question mark. Not actually sure if that's the case. I mean, it's certainly showing that the corporate entity was there. Who knows if it's in good standing or bad standing, but it says it's showing up in the database. But then the listener says under dead mon's name, I don't know what that means. That does that mean? That it's registered as a nonprofit corporation in the state of whatever, and Tom is listed as the president or the registered agent or something like that.

Jess 00:11:02 Or is the corporation an LLC owned by that mon? I don't know. To that's something this listener needs to check out, because if it is a nonprofit corporation that's formed under the nonprofit statute or whatever in this state, that's probably fine that the whose name it's under just needs to be updated because they need like a point of contact, like a person who is affiliated with this corporation. To that's fine. You can change out deceased mother's name and put in new officer's name. Of it's an LLC that deceased mother actually owned, that's not a nonprofit and you can't use that. That's not how this works. And there's no way to convert an LLC into a nonprofit corporation. To then they say, should I just create a new nonprofit and transfer the asset somehow? Probably, yeah. Because my guess is that this quote quote nonprofit, we'll just call it that. They've been sanctioning with the intention of being a charity. They probably never had tax exemption, because if this thing was started in 2005 or before, that relates the whole requirement that every single entity that's a nonprofit file in 1990.

Jess 00:12:24 To in 2009, the IRS passed a new rule that was like, hey, we don't care how much money you bring in you, even if it's \$100, you need to file a 999. And it used to be before that that if you had like less than \$5,000 of activity, you could be what was called self-declared. To you're like, yeah, we're a charity. Nobody, nobody cares. It's too little bit of money for anybody to care. To we're just going to like claim that we're a Of and call it a day. Now, the IRS doesn't allow that. To my guess is, if you were to search up this charity in the exempt entities database with a tax of number that I actually don't know exists because it might have been deceased. Other's social Security number, opening that bank account most likely. When you will need to actually form a nonprofit corporation, get a federal tax of number for the nonprofit corporation, and apply for income tax exemption. Because right now we're probably saying we are a charity when we're not a charity and we're not actually recognized as a charity.

Jess 00:13:31 And then that's where everyone has already tuned out, because who cares about all this compliance? To. When that's where the attorney General's office for your state is going to be like, hi, you're committing fraud. I. You're holding yourself out and claiming to be a 501 Of charity, and you're not. And you don't get to do that because that's deceptive consumer practices. And we don't like that. To there's like a whole just cornucopia. Yes. Worn. That was the most Minnesota you could possibly say that work. Did you hear that? Cornucopia? Oh my God. To many compliance issues for this charity. There are they now? Maybe they're in South Dakota. Maybe they're in Texas. Those are two states where there is no attorney general. Who cares? It's possible there's you know, it could be. Would be. He don't know. By guess is they're probably somewhere where there is an attorney general that cares. And they should be registering to say hi. He're an entity that's asking for donations in your state from your citizens.

Jess 00:14:37 Yeah. To that's my advice. Basically, if this was a client that came in and was just was like, here's my big cornucopia mess. Less, what do I do? I would probably be like, suite, sweep, sweep, sweep. Met's just pretend this never happened. Start over as a new nonprofit. Met a new tax of number. Met a new tax exemption. And start doing things right. Going forward. And like from the participant, from the donor, from from the program perspective. Probably not going to have that big of an impact. You'll be able to release the old name, pick it up again for the new nonprofit and you'll be fine. But like this is a complete do over situation.

Meghan 00:15:20 Yeah, it makes sense to start from scratch here when we're talking about like potentially 20 years of non filing, not handling things like that's a very long time to try to backtrack. It a certain point you have to say, okay, we want to be a nonprofit. He want to continue doing this work.

Meghan 00:15:38 Like how can we set ourselves up to do that correctly and well going forward, rather than trying to unravel 20 years worth of missed deadline and being out of compliance. Like because one. Like you said, one way or another, they are out of compliance. Either they were pretending to be a nonprofit and they weren't, or they weren't nonprofit, but did not file all the things. To they're, you know, they're not tax exempt. They don't they haven't been registered like either way.

Jess 00:16:06 And I can like, I can feel the ghost of this person in my office being like, but but isn't there maybe there's a way we just tell the IRS and like, we'll do we'll get all the way back and we should fix all of the parts. And I'm that comes up so many times and I'm just like, in a situation like this. To, no. Yes. On't don't try and get retroactive restatement back to 1998 or what. Must it just start over. Must start over.

Meghan 00:16:35 I think there's a couple reasons where that comes from, but one of them is that people who want to do good and care about doing things right feel this like guilt for things not having gone well, even if they weren't involved in it, wasn't up to them.

Meghan 00:16:49 It's this sort of like, no, we have to go through the proper channels and get this set up correctly and like have to I have to feel like I'm not hiding something or that we are breaking the law to do this. And it's like what's done is done. Yeah, there is no.

Jess 00:17:05 The the best time to fix this was in 2005. The second best time to fix this is today. And the best way to fix this today is to just start over. And I do want to say the press, you know, there's a thing at the end about the president had no idea any of this was the, you know, this way. And when clients come in with this kind of situation, everybody's always breaking out about being sued and the liability, you know, my gash. And it's like, yes, that's the appropriate feeling to have. But also breaking out is not going to fix anything. That you should do is you need board training. They can't be that The president has no idea what's going on.

Jess 00:17:52 Everyone on the board needs to actually learn what their duties are, and get trained about what the kind of basic decadence of the life cycle of a nonprofit and the year of a nonprofit, and what the general reporting obligations are and what their duties are as a board. To rather than like worry about the past 20 years, I'm much more focused on like, how do we get a clean slate and a fresh start and make sure that going forward, we put in place a routine of new board member training, refreshed board member training, and and professionalizing this outfit just a little bit. It you know, I understand these are small organizations and this one's probably small like very small. Yeah. But you still need to kind of learn the basis. Of you're going to take on that liability, then just you got to invest in the training. And there's lots of ways to get that in an unfordable way.

Meghan 00:18:51 And that's, you know, it's for the good of the entire organization. Because the other thing here is that, you know, talking about how the president didn't know what was going on.

Meghan 00:18:59 But part of that is because they were relying on a treasurer to do everything. You know, like it should never be just one person's responsibility to make sure that the organization is in good standing.

Jess 00:19:10 Or they just thought that the board, they didn't even know that that was their job. I feel like I'm I'm channing Roger Meyer from previous episodes, like they didn't



even know what their job was or that this was their responsibility. And that's that's the thing we have to fix. It's like you need to know what your job is and it yes, it's to do program if that if you're a working board. But it's also to do this stuff. Yeah. Okay. That do we have for takeaways here.

Meghan 00:19:40 Yeah I have a few. First of all nonprofits are not simple to run. Like there are layers of compliance and complexity that are not always super difficult to do, but they are there, and they can make your life more difficult if you're not prepared to do them. To if you're working in and around nonprofits, it's something that you need to be aware of, that there is work that needs to happen every single year, and sometimes it will get more complicated as you grow and things change.

Meghan 00:20:13 To nonprofits have a lot going on. Next, I think the biggest like overall takeaway from a situation like this, because obviously not everyone is going to discover a 20 year lapsed like nonprofit, hopefully, hopefully. But whether that is even close to your situation or not, I think a lot of the times the biggest thing that you can do is understand, look at the past enough to understand what has happened and then pilot toward how can we make this right for today and moving forward? He don't need to mitigate every moment of the past, but we do need to make sure that we are doing right by the nonprofit going forward. And a big way of doing that is making sure that the board of directors understands what their responsibilities to the nonprofit are and understands what their job and their role is within the organization, so that we don't miss out on things for 20 years.

Jess 00:21:09 Yes, you drive the car looking out of the windshield, not the review mirror. And so I just want to, like, reassure this person, like, this is scar and you're in charge.

Jess 00:21:19 And it's like, oh my gash. Oh, now this is all my problem and my mess. And it is. But like, you got this. Each out to somebody who can help. You're going to be fine. And we're going to drive the car going forward, and we'll use the review mirror in a limited way. Are we is that it? I think that's I think that's good. Okay. Began, thank you for being here with me, my intrepid co-host. Is that even a phrase? I think that's.

Meghan 00:21:48 Right. I think we've used it more than once. To if not, we're making it one.

Jess 00:21:52 Yes, I'm going to need you to Google that one. Right. I'm using vocal that I'm not even sure what it means. All right, folks, if you know what intrepid means, please email me, get on the webster and send us a story. End us some crazy situation we really



want to hear from you. Also, if you could leave us a five star rating in the tunes place or anywhere, that would be so helpful.

Jess 00:22:18 Of you've got somebody who just joined a board and found a big mess, feel free to share this episode with them because it will make them feel better. And as always, thank you for listening. See you next.

00:22:31 Time.

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## About the Author



**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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