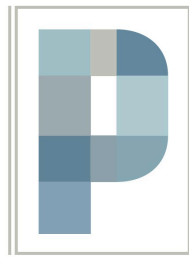


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A Few Compliance Tips for Youth Sports Booster Clubs

A widely publicized 2013 Tax Court case upheld the IRS' decision to revoke the tax-exempt status of a youth gymnastics booster club (*Capital Gymnastics Booster Club, Inc.*, TCM 2013-193). The decision was not particularly surprising from a legal perspective, but it did serve as a reality check for the estimated 12,000 or more youth sports booster clubs around the country in terms of how they operate and how diligently they monitor their legal and tax compliance.

The relevant facts of the case were straightforward (and perhaps all-too-common among similarly situated nonprofits). There was a for-profit gym that taught gymnastics. The owners of the gym helped organize a 501(c)(3) booster club to help cover competition expenses for the students who trained at that gym. Membership in the booster club was mandatory. The club organized a variety of fundraising events, and participating families received “credits” for the amounts they helped raise. Individual accounts were maintained for each gymnast, and the credits earned by that individual were applied to that gymnast's account to offset competition expenses.

It is not difficult to comprehend why the IRS took umbrage with such activities. In fact, the legal analysis was quite simple. A 501(c)(3) organization must be organized and operate exclusively for a charitable purpose. Its assets and activities cannot be applied to any meaningful degree for the benefit of specific individuals. Private inurement and private benefit are strictly prohibited for 501(c)(3) organizations.

The term “private inurement” is a somewhat arcane term for a type of personal benefit that occurs when an exempt organization uses its assets to benefit an individual or small group of individuals that have a close connection to the organization (e.g., officers or directors of the organization). The term “private benefit” is a related, but distinct, concept that is not specifically defined in the Internal Revenue Code but has been interpreted and applied more broadly to encompass “nonincidental benefits conferred on disinterested persons that serve private interests.” (*American Campaign Academy v. Commissioner*, 92 T.C. 1043 (1989)).

For the members of the Capital Gymnastics Booster Club—and other booster clubs like them—there was little question that they were receiving a private benefit when their fundraising efforts resulted in economic benefits flowing back to them through the accumulation of account credits or points. Put most bluntly, raising money to benefit yourself (or your child) is not charitable. But isn't that the purpose of a booster club? Well, sort of. Fundraising in and of itself is OK. The problem is when fundraising efforts are earmarked to benefit the specific people who helped raise the funds (often referred to as “pay to play”). There are perfectly legitimate ways for booster clubs to operate without private inurement or private benefit problems.

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ERIC C. PERKINS, ESQ. 4870 SADLER ROAD SUITE 300 GLEN ALLEN, VA 2306

ERIC@ERICPERKINSLAW.COM WWW.ERICPERKINSLAW.COM PHONE (804) 205.5162 FAX (804) 482.2835

Taking into account the Capital Gymnastics Booster Club tax court decision and other IRS guidance, such as *Athletic Booster Clubs: Are They Exempt?*, by Debra Cowen and Gerald Sack, 1993 EO CPE Text, here are several recommended best practices that should minimize risk that youth sports booster clubs will have their operating practices (and tax-exempt status) called into question by the IRS:

- (a) provide for voluntary (not mandatory) membership in the club;
- (b) encourage full participation in fundraising activities, but do not make such participation mandatory;
- (c) minimize the direct involvement of gym owners with the booster club (e.g., no owner should serve as an officer or director of the booster club);
- (d) the board of directors should retain full control over how booster club funds are disbursed (i.e., individual members may not withdraw funds as they wish or direct how funds are spent);
- (e) develop a fundraising strategy that relies more on individual donations, corporate sponsorships, foundation grants, and club-wide fundraising events as opposed to individual—focused fundraising efforts. An incidental amount of individual efforts (e.g., scrip, flower sales, etc.) is generally considered acceptable, but such activities should not rise to the level that the individual efforts make up the primary source of revenue for the booster club;
- (f) booster club funds may not be commingled with the for-profit gym or facility with which the booster club is connected), nor should booster club funds be used to buy new equipment to be used by, or for the benefit of, the for-profit business; or
- (g) booster club funds should not be earmarked for specific individuals, but rather should be divided equally across the board among all members or by specific level or category (if there is a rational basis for distinguishing among those different levels).

As is often the case, there are few bright-line rules offering definitive guidance, the facts and circumstances of every situation must be carefully assessed. Careful attention to the core concepts of private benefit and private inurement, as well as the charitable mission of the organization as defined in its governing documents will go a long way toward keeping a 501(c)(3) youth sports booster club on the right track. There are also other types of organizational structures and categories of tax-exempt status that might better serve the needs of a booster club that does not feel it can comfortably fall within the confines of what is required of 501(c)(3) organizations. That will be a topic of discussion for another day.