

# Chapter 15

## Forming and Maintaining a CTD

### Chapter 15 Overview

- ✓ Outlines the **two manners in which Kansas CTDs were created**.
- ✓ Details **maintenance of CTD status**.

#### A. Creation of a CTD

Two corporate forms were used to create CTDs in Kansas.

- ◆ Private non-profit agencies serving as a lead administrative unit (CTDs 1-5, 7-11, 13-15); or
- ◆ Administrative agency created through an interlocal agreement (CTD 6, 12)

Formation of a CTD under one of these corporate structures was necessary to provide the legal right to perform certain tasks, including entering into contracts with providers for governmental funding and reporting information to KDOT.

#### **PRIVATE NON-PROFIT CORPORATION STATUS**

Some CTDs have formed private non-profit agencies. They did so by:

##### **1. Drafting bylaws and Articles of Incorporation;**

Bylaws are internal operating rules for the agency. Bylaws are optional and do not need to be filed with any governmental agency. These rules however, are useful in creating a sense of order and understanding among those involved in the administration of the CTD.

#### **NOTES**

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### CONTENTS OF EFFECTIVE BYLAWS

Effective bylaws should contain provisions governing the following aspects, among others:

- ◆ Qualifications, rights, limitations, and obligations;
- ◆ Number of directors;
- ◆ Fees and assessments;
- ◆ Distribution of assets on dissolution;
- ◆ Fiscal year identification;
- ◆ Meeting information;
- ◆ Accounting procedures;
- ◆ Maintaining corporate records; and
- ◆ Amending bylaws.

### 2. Obtain 501(c)(3) status.

These private non-profit corporations also had to obtain tax exempt status to form.

### TESTS FOR TAX EXEMPT STATUS

- ◆ The organizational test, i.e. the Articles of Incorporation and Bylaws must show that the CTDs purposes, powers and actions upon dissolution conform with non-profit corporation status; and

The operational test, i.e. the CTD must show that the activities in which it engages accomplish a tax exempt purpose as described above.

The applicants for private non-profit corporation status were required to complete the following IRS forms:

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- ◆ **Form 1023**---“Application for Recognition of Exemption”;
- ◆ **Form 8718**---“The User Fee for Exempt Organization Determination Letter Request”;
- ◆ **Form 872-C**---“Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the IRC”; and
- ◆ **SS-4**---“Application for Employer Identification Number.”

Forms were submitted to:

Internal Revenue Service EP/EO Div.  
1100 Commerce St.  
Mail Code 306  
Dallas, TX 75242.

An application fee of \$150 was paid by applicants.

### **TAX EXEMPT STATUS BY INTERLOCAL AGREEMENT**

Some entities also chose to establish themselves in the corporate form of an interlocal agreement, authorized by the Interlocal Agreement Act. Interlocal agreements are frequently used by governmental units to make the most efficient use of their powers by enabling them to enter into contracts with other entities in order to further shared goals.

In order to enter interlocal agreements, the CTDs sought written permission of local governing bodies.

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### CONTENTS OF AN INTERLOCAL AGREEMENT

Pursuant to K.S.A. 12-2904(c), interlocal agreements should contain the following requirements:

- ◆ Duration of the agreement;
- ◆ Organization, composition and nature of any separate entities created;
- ◆ Public purpose;
- ◆ Finance and budget information;
- ◆ Methods to terminate the agreement; and
- ◆ Any other necessary and proper matters.

These agreements, as required by statute, were approved by the Attorney General of the State of Kansas to ensure compliance with the law. After approval, the agreements were filed with the Kansas Secretary of State and the Recorder of Deeds in all counties that were parties to the contracts.

#### **B. Maintenance of a CTD**

Upon the completion of the application process and review by the IRS, the CTDs were notified as to whether tax exempt status had been granted. These organizations will maintain tax-exempt status so long as there are no substantial changes in the agencies' purposes, methods, or character of operations. A material change in the Articles of Incorporation, Bylaws, company name or address should be communicated as soon as possible. Failure to report such changes could lead to revocation of tax exempt status.

CTDs must complete record-keeping procedures to ensure continued exemption. Records must show that funds are spent only for tax exempt purposes. If funds are distributed by the CTD to other agencies, case histories must be kept showing the recipients' names, addresses, purposes of awards,

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manner of selection, and relationship to members, officers, trustees, or donors of funds.

Non-private tax exempt organizations must complete a form 990 or 990EZ each year. Organizations with gross receipts of less than \$100,000 and total assets of less than \$250,000 are eligible to file a form 990EZ.

**Form 990** Return of Organization Exempt From Income Tax  
 (Under section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation) or section 4947(a)(2) nonexempt charitable trust)  
 (OMB No. 1545-0047) **2009**

Department of the Treasury Internal Revenue Service

**Part I** Identification

**A** For the 990 reporting year, check the appropriate box(es):

**B** Check all that apply:

**C** Type of organization:

**D** Employer identification number:

**E** Telephone number:

**F** If other box is checked "This" enter four-digit group registration number (GGR#):

**G** If "Yes," enter the number of affiliates to which this return is filed:

**H** Check here if the organization's gross receipts are normally not more than \$12,000. The organization need not file a return with the IRS, but if it received a Form 990 Package in the past, it should file a return within financial data. Some states require a copy/return.

**Part II** Revenue, Expenses, and Changes in Net Assets or Fund Balances (See Specific instructions on page 15.)

Part II	Revenue	Expenses	Net Assets
1	Contributions, gifts, grants, and similar amounts received:		
a	Direct public support		
b	Indirect public support		
c	Government contributions (grants)		
d	Total (add lines 1a through 1c) (attach schedule of contributing organizations)		
2	Program service revenue including government fees and contracts (from Part VII, line 30)		
3	Membership dues and assessments		
4	Interest on savings and temporary cash investments		
5	Dividends and interest from securities		
6a	Gross rents		
b	Less: rental expenses		
c	Net rental income (or loss) (subtract line 6b from line 6a)		
7	Other investment income (interest)		
8	Gross amount from sales of profits other than inventory:		
a	Less: cost or other basis and sales expenses		
b	Gain or (loss) (attach schedule)		
9	Net gain or (loss) (combine line 8c, columns (b) and (c))		
10	Special events and activities (attach schedule):		
a	Gross revenue (not including 50% of contributions reported on line 1d)		
b	Less: direct expenses other than fundraising expenses		
c	Net income (or loss) from special events (subtract line 9b from line 9a)		
10a	Gross sales of inventory, less returns and allowances		
b	Less: cost of goods sold		
c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)		
11	Other revenue (from Part VII, line 30)		
12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8c, 9c, 10c, and 11)		
13	Program services (from line 44, column (B))		
14	Management and general (from line 44, column (C))		
15	Fundraising (from line 44, column (D))		
16	Payments to affiliates (attach schedule)		
17	Total expenses (add lines 13, 14, 15, and 16)		
18	Excess or (shortage) for the year (subtract line 17 from line 12)		
19	Net assets or fund balances at beginning of year (from line 73, column (A))		
20	Other changes in net assets or fund balances (attach explanation)		
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)		

For Paperwork Reduction Act notice, see page 1 of the separate instructions. OMB No. 1545-0047 Form 990 (2009)

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**Form 990-EZ** **Short Form** **Return of Organization Exempt From Income Tax** **OMB No. 1545-0045** **1999**

Under section 513(c) of the Internal Revenue Code, except those filing benefit trust or Form 990-BEZ. For organizations with gross receipts less than \$100,000 and total assets less than \$1,000,000 at the end of the year. The organization may have to use a copy of this return to satisfy state reporting requirements.

**Part I** For the 1999 calendar year, 2000 tax year beginning **year and ending**

**A** For the 1999 calendar year, 2000 tax year beginning **year and ending**

**1** Type of organization:  Charitable  Religious  Educational  Scientific or literary  Other (specify) \_\_\_\_\_

**2** Employer identification number \_\_\_\_\_

**3** Telephone number \_\_\_\_\_

**4** Check  if description addition is pending

**5** Check  if group exemption number (GEM) \_\_\_\_\_

**Part II** Revenue, Expenses, and Changes in Net Assets or Fund Balances (See Specific Instructions on page 37)

1	Contributions, gifts, grants, and similar amounts received (attach schedule of contributions)	1
2	Program service revenue including government fees and contracts	2
3	Membership dues and assessments	3
4	Investment income	4
5a	Gross amount from sale of assets other than inventory	5a
5b	Less: cost or other basis and sales expenses	5b
5c	Gain or (loss) from sale of assets other than inventory (line 5a less line 5b)	5c
6	Special events and activities (attach schedule)	6
7	Gross revenue from including \$ _____ of contributions reported on line 1	7
8	Less: direct expenses other than fundraising expenses	8
9	Net income or (loss) from special events and activities (line 7a less line 8)	9
10	Gross sales of inventory less returns and allowances	10
11	Less: cost of goods sold	11
12	Gross profit or (loss) from sales of inventory (line 10 less line 11)	12
13	Total revenue (add lines 1, 2, 3, 4, 5c, 6, 7, 9, and 12)	13
14	Grants and similar amounts paid (attach schedule)	14
15	Benefits paid to or for members	15
16	Salaries, other compensation, and employee benefits	16
17	Professional fees and other payments to independent contractors	17
18	Occupancy rent, utilities, and maintenance	18
19	Printing, publications, postage, and shipping	19
20	Other expenses (describe) _____	20
21	Total expenses (add lines 14 through 20)	21
22	Excess or (deficit) for the year (line 13 less line 21)	22
23	Net assets or fund balances at beginning of year (line 22, column (a)) must agree with end-of-year figure reported on prior year's return	23
24	Other changes in net assets or fund balances (attach explanation)	24
25	Net assets or fund balances at end of year (columns 23 and 24)	25
26	Total liabilities (describe) _____	26
27	Net assets or fund balances (line 25 of column (b) must agree with line 25)	27

**Part III** Balance Sheets—If total assets on line 25, column (b) are \$250,000 or more, file Form 990-BEZ instead of Form 990-EZ.

28	Cash, savings, and investments	28
29	Land and buildings	29
30	Other assets (describe) _____	30
31	Total assets	31
32	Total liabilities (describe) _____	32
33	Net assets or fund balances (line 27 of column (b) must agree with line 27)	33

For Preparation Instructions, see page 7 of the separate instructions. Use No. 1545-0045 Form 990-EZ 21

### BASIC CONTENTS OF FORM 990 AND 990EZ

A form 990 must include the following information:

- ◆ The organization's gross income for the year;
- ◆ Its expenses attributable to income and incurred within the year;
- ◆ Disbursements within the year for tax exempt purposes;
- ◆ A balance sheet showing assets, liabilities, and net worth as of the beginning of the year;
- ◆ The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors;
- ◆ Names and addresses of the agency's managers and other highly paid employees; and
- ◆ The compensation or other payments made to these managers and employees.

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Forms 990 and 990EZ must be filed by the 15<sup>th</sup> day of the 5<sup>th</sup> month after the end of the annual accounting period for the agency. Late charges of \$10 per day will apply if not timely. If the agency's annual receipts are less than \$25,000, it will be excused from the filing requirement.

### CHECKLIST

- Does your organization have Articles of Incorporation and Bylaws? 15-1 and 15-2
- Is your organization tax exempt? 15-2
- Should your organization annually file IRS Form 990 and 990EZ? 15-4 and 15-5