Jan 1st DMS Accounting & Banking Change

Gmail   Mark Havens <mark.r.havens@gmail.com>
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10 messages
Mark Havens <mark.r.havens@gmail.com>   Mon, Dec 13, 2010 at 1:47 PM
To: dmsbiz@dprg.org
Regarding the business structure change that we discussed on 12/2, after
brainstorming with Doug, the main concern he has expressed was the need
to reduce the DPRG's accounting burden for all of the DMS transactions.
Traditionally this is done by keeping segregated accounts, which probably
should have been done on day one.

As Steve mentioned on 12/2, there may be complications resulting in the
transfer of funds from on entity to another. In any case, instead of
completely switching over all operational and financial control to the
new corporate structure and losing 501c3 status, I propose the following:

- Make use of joint DMS-DPRG financial accounts
- Keep 501c3 status and continue to operate as a non-profit/committee in
transition
- Transfer any earmarked funds as needed to the DMS-DPRG shared accounts

Similar financial arrangements aren't uncommon in joint venture
operations, but this should satisfy any tax liability concern since the
DPRG doesn't lose ownership of the funds. Once the DMS has achieved
independent 501c3 status (optimistically hoping for this Spring), the
DPRG simply removes itself from all accounts and associated paperwork.

Please let me know if anyone foresees any issues with this proposition,
otherwise I'll attempt to move forward.

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Mark R. Havens | 1905 Dana Ct | Irving, TX 75060
Mobile: 972-922-2281

Steve Rainwater <srainwater@ncc.com>   Mon, Dec 13, 2010 at 2:59 PM
To: dmsbiz@dprg.org
It's important to keep the new entity completely isolated from the DPRG
until it's got 501(c)(3) status. At that point the DPRG can shutdown
their internal makerspace project and move everything over to the new
entity through a grant.

The biggest worry is that we need to protect the existing 501(c)(3)
status of the DPRG and one thing that can endanger that is joint
involvement with a for-profit (or a non-non-profit if that's a better
term). If the DPRG is determined by the IRS to exercise any control over
a non-501(c)(3) organization, that's enough to lose 501(c)(3) status.

>From what I can find Googling there are some ways around this that
involve drafting what may be complex legal agreements between the two
organization that the IRS allows under something call the 98-15 ruling.
The other problem is that once there's a financial relationship you have
to make sure no current or former officers or directors of the
non-profit are serving in the for-profit.

Anyway, I think we're talking about a lot of work and risk just to save
a few hours of accounting work. The accounting burden really isn't that
bad now, maybe a hundred transactions per month (45 paypal deposits plus
whatever expenses we're paying). If we get the new org's 501(c)(3)
status approved then we're good to go anyway, so I think we're better
off putting the effort into getting through the work needed to do that.

But if you want to go the 2nd account route, we need to bring it up in
the next DPRG board meeting and get their approval. There's a BoD
meeting this Thursday.

-Steve

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> ____
> DMSbiz - Please DO NOT cross post to public DMS list!
> DMSbiz mailing list
> DMSbiz@dprg.org
> http://list.dprg.org/mailman/listinfo/dmsbiz

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Mark Havens <mark.r.havens@gmail.com>   Mon, Dec 13, 2010 at 5:41 PM
To: Steve Rainwater <srainwater@ncc.com>
Cc: dmsbiz@dprg.org

I don't think any "non-non-profit" concern applies in our case since a non-profit organization with less than 5k of annual receipts is automatically exempt by the IRS without being required to formally file for 501(c)(3) status.
Not Required To File Form 1023 to Establish Formal Exemption: Any organization normally having annual gross receipts of not more than $5,000 are exempt automatically if they meet the requirements of section 501(c)(3).

http://www.irs.gov/publications/p557/ch03.html#en_US_2010_publink1000200048

Since both legal entities (DMS & DPRG) meet this 501(c)(3) exemption, and there's no private interests to worry about, none of the financial entanglement concerns should be an issue.

Exemption Requirements Include: The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual.

http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html

After giving this even more thought from a total organizational ownership perspective of the DPRG, I have new concerns that the DPRG may have unintended tax liability by operating outside it's documented 501(c)(3) scope as a general hackerspace, of which it may be accountable for any unrelated business income received by it's hackerspace membership. Given that monthly receipts have risen by 1320% over the last year, I'm sure this might raise a red flag which could require and explanation.

http://www.irs.gov/pub/irs-pdf/p598.pdf

However, since we already have plenty of documentation that proves the intentions of both groups of people to legally untangle (which should be a routine action from an IRS perspective), then I don't think there's an actual issue here at all.

Let me know if I'm on target when addressing these concerns. The alternative, as you mentioned, is to open a separate financial account that is solely owned and controlled by the DPRG. From my perspective, this would be unnecessary, and would incur another form of risk and liability on the side of human assurance. The accounting burden is simply the expressed concern of a handful of people; there are plenty of other, more troubling concerns being expressed as well. At a time in which it was promised that the DPRG and DMS would formally become separate entities, we would risk a distortion of any sense of equal partnership between the two organizations if we failed to make substantial efforts to help realize this goal of independence. We also plant seeds of unneeded speculation and mistrust, as well as facilitate a sense of unattained ownership within the DMS membership.
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Steve Rainwater <srainwater@ncc.com>   Mon, Dec 13, 2010 at 6:30 PM
To: dmsbiz@dprg.org

On Mon, 2010-12-13 at 17:41 -0600, Mark Havens wrote:
> The accounting burden is simply the expressed concern of a handful of
> people; there are plenty of other, more troubling concerns being
> expressed as well. At a time in which it was promised that the DPRG
> and DMS would formally become separate entities, we would risk a
> distortion of any sense of equal partnership between the two
> organizations if we failed to make substantial efforts to help realize
> this goal of independence.

It's a pretty small time frame we're talking about here. If we just do the work we need to and complete the process of getting 501(c)(3) approval, we could have it within 30-60 days. That's still well ahead of the lease expiration, which was the original target date for separation. We'd all like to see it happen faster, but I think we need to be patient and stick to the plan. I'm not seeing any compelling reason to worry about the additional work just to have dual bank accounts for a month or two.

What's the rest of steering committee think on this? If we need to do a vote on how to proceed that should happen before Thursday so we can bring it up at the DPRG's BoD meeting.

-Steve
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Mark Havens <mark.r.havens@gmail.com>   Mon, Dec 13, 2010 at 8:08 PM
To: Steve Rainwater <srainwater@ncc.com>
Cc: dmsbiz@dprg.org
Actually, this isn't that complicated. There's not a lot of extra work to be done here; only the following:

1) Add DPRG President and Treasurer to DMS accounts (20 minute trip to the bank), knowledge transfer, and documentation hand-offs
2) Full Accounting (might take a while, but it needs to be done anyway)
3) Funds transfer to new account

All other operations continue as they are now. The bank accounts already exist, and no new accounts need to be opened or closed in the future. The hardest part is the bookkeeping, which I expect has been neglected for months. Peter has already volunteered for year-end bookkeeping duty, and Doug seemed pretty excited by the news.

Also...

After further research, I've discovered that obtaining an IRS 501(c)(3) designation is only a method of providing assurance to potential contributers that their donation is tax deductible. It doesn't actually change the tax deductible status of the donation or the organization, provided that all the requirements outlined by the IRS are already met. If it were decided to move forward without the DPRG (which nobody plans to do), with our current monthly receipts, and beginning on Jan 1, we wouldn't be expected to file for our 501(c)(3) paperwork until 90 days after the 2011 tax year, which would be in April of 2012. For the entire year of 2011, we would already be 501(c)(3) exempt.
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Steve Rainwater <srainwater@ncc.com>   Tue, Dec 14, 2010 at 10:24 AM
To: dmsbiz@dprg.org
Well, I think it's a bad idea but I've thrown in my 2 cents. If you guys want to do this, we need to bring it up with the DPRG at Thursday's BoD. There won't be another until January. The DPRG board needs to sign off on a change in plans of this type. What I'd suggest is we do a vote of the steering committee here on the list and if the steering committee votes to do it, ask the DPRG board to vote Thursday night. Then you'd be good to go before Jan 1st.

-Steve
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Mark Havens <mark.r.havens@gmail.com>   Tue, Dec 14, 2010 at 3:11 PM
To: dmsbiz@dprg.org
I can always count on counterpoints from Steve. Sometimes I think that if the space was offered a million dollars, he'd come up with a reason to refuse it before understanding where it came from and why it was given to us.

Before anyone starts blindly casting votes, I want to make certain that everyone understands that we have been setting our 501(c)(3) goals on the basis of erroneous, incomplete, and irrelevant information. I believe that I have answered each of Steve's concerns so far, but everyone feel free to bring any more issues to light. I want to make sure this is thoroughly hashed out before any actions take place.

Other possible issues to discuss:

- Automated Paypal concerns regarding inactive members
- Lease, CO, Insurance, and miscellaneous contract issues
- DPRG Hackerspace Policy agreement

If anyone missed or needs to review the DPRG Hackerspace Policy agreement from January, you can check it out here:

https://docs.google.com/Doc?docid=0AUi0lH8qae14ZGM2c2NoZmdfNjdkc3ByaDJjdA&hl=en

We don't have much time to make the transition before potentially being obligated to stay on with the DPRG for another year.
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Steve Rainwater <srainwater@ncc.com>   Tue, Dec 14, 2010 at 4:08 PM
To: dmsbiz@dprg.org
On Tue, 2010-12-14 at 15:11 -0600, Mark Havens wrote:
> Before anyone starts blindly casting votes, I want to make certain
> that everyone understands that we have been setting our 501(c)(3)
> goals on the basis of erroneous, incomplete, and irrelevant
> information.

The goal I'm aware of is that we want to create a 501(c)(3) into which the DPRG can grant the assets and members of the makerspace. That can be done with or without the transitional joint banking account you're advocating.

> We don't have much time to make the transition before potentially
> being obligated to stay on with the DPRG for another year.

Nothing special happens Jan 1. There is no obligation to stay with the DPRG for another year if something isn't done by then. The policy document defining how the DPRG handles the relationship was voted on in June and is based on the term of our one year lease. The lease term is up in June 2011. The transition can occur any time prior to that. It could have occurred by now if we'd put a little more effort into getting the boring stuff on our ToDo list done.

We went over what's left at the meeting last Thursday. Once we get a statement of purpose that everyone is cool with, we can refile the tweaked Texas incorporation, apply for our EIN, and file the 501(c)(3) paperwork. The rest of the ToDos can be done by the time we get IRS approval. None of that is going to happen any faster by having a joint bank account and once it's done, we won't need a joint account anyway because the DPRG will transfer all our funds into our account.
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Mark Havens <mark.r.havens@gmail.com>   Tue, Dec 14, 2010 at 6:43 PM
To: Steve Rainwater <srainwater@ncc.com>
Cc: dmsbiz@dprg.org
On Tue, Dec 14, 2010 at 4:08 PM, Steve Rainwater <srainwater@ncc.com> wrote:

The goal I'm aware of is that we want to create a 501(c)(3) into which the DPRG can grant the assets and members of the makerspace. That can be done with or without the transitional joint banking account you're advocating.

According to the DPRG Hackerspace Policy, there is no specific mention of a 501(c)(3) process, only that we establish a "legal non-profit organization and management structure". We have supported a priority push for the 501(c)(3) filing on the basis on your recommendation and with the false belief that it was mandatory for 501(c)(3) status. As I have already established, a 501(c)(3) filing is irrelevant to DMS tax status; DMS is automatically recognized by the IRS as a 501(c)(3) organization. There does not appear to be a reason to delay the transition further, but if one can somehow be provided, I want everyone to understand what that reason is.

Regarding the transitional joint banking account, you are right. This idea was originally based on the false assumption that the DMS did not already have 501(c)(3) status. There may be other benefits, but I'll address these later. For now, I feel that I must reiterate that the DMS already has 501(c)(3) status.

Nothing special happens Jan 1. There is no obligation to stay with the DPRG for another year if something isn't done by then. The policy document defining how the DPRG handles the relationship was voted on in June and is based on the term of our one year lease. The lease term is up in June 2011. The transition can occur any time prior to that. It could have occurred by now if we'd put a little more effort into getting the boring stuff on our ToDo list done.

I'm unable to locate the DPRG minutes for June. There is nothing listed on the DPRG website for that month. I would like to substantiate your claim that it was voted on in June. The document that was presented to me and Peter was, and is currently dated for January. It was accepted in good faith by DMS membership that the agreement took place in January. If the DPRG voted on it in June, as you claim, I still have trouble understanding the relevance of your point. Also, because of the CO trouble, the lease was extended to August. I confirmed this yesterday with our property manager, not that this is relevant.

But I'm glad that you've acknowledged that the transition can happen at anytime. I have been operating under the belief that we were to transition in January. I have represented this belief to others, and have made commitments that reflect our obligation to transition in January. Based on many of the arguments you have presented so far, and after researching and learning the actual requirements for non-profit 501(c)(3) status, it may be prudent to begin advocating for the transition right away. In case anyone neglected to read my previous mention of this earlier, I'll go ahead and reiterate that the DMS already has 501(c)(3) status.

We went over what's left at the meeting last Thursday. Once we get a statement of purpose that everyone is cool with, we can refile the tweaked Texas incorporation, apply for our EIN, and file the 501(c)(3) paperwork. The rest of the ToDos can be done by the time we get IRS approval. None of that is going to happen any faster by having a joint bank account and once it's done, we won't need a joint account anyway because the DPRG will transfer all our funds into our account.

I'm not suggesting that we delay the 501(c)(3) filing. But you're right, the joint account idea isn't really that necessary. I suggested it as a compromise so that the DPRG and DMS may transition more smoothly by sharing management resources such as Doug, and by sharing financial resources, such as monthly Paypal receipts that fail or fall behind during the transition. There may be other unknown benefits that nobody has considered.

What I am now considering a priority, thanks to your input, is that we proceed with the transition right away. Waiting to get off our asses, file, and get a response back from the IRS is an unnecessary waste of time that would be better prioritized in parallel, or after the actual transition. Once again, I feel that I must make one final reiteration that the DMS already has 501(c)(3) status.

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Peter Smith <peters242@gmail.com>       Thu, Dec 16, 2010 at 9:53 AM
To: dmsbiz@dprg.org
I'm planning on discussing this some at the meeting tonight.  Today
hopefully I'll be able to do some research on it.

P
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