

## FRATERNAL GROUP CHARITABLE TRUST/FOUNDATION MEMO:

This is an overview guide for charitable trust/foundation registration in the State of Ohio. Because there are many complex situations that may arise, fraternal groups should seek competent professional guidance from a local attorney. If the attorney hired has additional questions, she/he may contact \_\_\_\_\_.

In general, all types of charitable trusts must register with the Attorney General of the State of Ohio. *Please refer to RC 109.23 and 109:1-1-02 for charitable trusts and foundations, to determine if your organization falls into one of these categories of a charitable trust.*

### DEFINITIONS:

**Assets** - refers to the total fair market value of the assets held by the organization at the end of the organization's taxable year.

**Charitable trust** – any fiduciary relationship with respect to property as a result of a manifestation of an intention to create it and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious or educational purpose.

*Caveat – The fact any person sought to be charged with fiduciary duties is a corporation, association, foundation or any other type of organization that has been distinguished from a charitable trust, does not necessarily mean it will not be determined to be a charitable trust by the Ohio Attorney General.*

**Private Foundation** – refers to IRC 509 § 4947(a)(1) - a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

**Split-Interest Trust** - refers to IRC 509 § 4947(a)(2) - In the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), shall apply as if such trust were a private foundation.

### REGISTRATION WITH ATTORNEY GENERAL:

Charitable organization are required to register with the Attorney General, unless exempt by law. *See below for exceptions.*

Registration is required within six months of forming the trust or an event that would require registration if not previously registered.

*Please refer to the link at the end of this document for the application for registration with Ohio Attorney General.*

## **PROVISIONS FOR CHARITABLE TRUSTS**

Restrictions if a private foundation and split-interest trusts:

- 1) No self-dealing
- 2) No excess business holdings
- 3) Making investments that would jeopardize the carrying out the exempt purpose of the trust.
- 4) Must not make taxable expenditures
- 5) Must clearly and conspicuously disclose at the point of solicitation:
  - a. the name of the charitable organization and the city of its principal place of business, and
  - b. if the charitable organization does not have a current 501(c)(3) letter of determination from the IRS, the particular charitable purpose to be advanced with the funds

*There are other restrictions that may or may not be included in your situation. Please refer to RC 109.231*

## **ADMINISTRATION OF CHARITABLE TRUSTS – annual financial reports**

The Attorney General may make additional rules regarding the administration of the Charitable Trust. *See link below for additional rules.*

- 1) Each organization subject to registration must file an [annual financial report](#) with the Attorney General for each calendar or fiscal year in which it has gross receipts of more than \$5,000 or gross assets of more than \$15,000. The annual report requirement may be satisfied by filing complete copies of all annual federal tax or information returns required to be filed by the organization with the Internal Revenue Service.
  - a. If you are not required to file a federal return, then a financial statement, signed by a trustee or officer, which accurately reflects the income, expenses, assets, liabilities, and net worth for the year must be submitted.

- 2) All [annual reports](#) must be filed with the Attorney General no later than four and one-half months following the close of the organization's accounting year, or by the date of any applicable extension of the federal filing date, whichever is later.
- 3) Annual Reports must be furnished on or before the 15<sup>th</sup> day of the fifth month after the close of the trust's taxable year.

A registered charitable trust is not required to file annual reports if for any taxable year it has gross receipts of less than \$5000.00 and at the end of which it has gross assets of less than \$15,000.00.

A charitable trust which is included within a group exemption letter issued by the IRS and which files a group return for federal tax purposes may file a single registration form with the Attorney General, and thereafter a single annual financial statement. (OA 109:1-1-03)

*There are several other provisions that may or may not apply to your situation. Please refer to RC 109.31 and attorney general website for further information.*

## **SOLICITATION OF FUNDS**

- 1) The solicitation statute requires that the trustees or officers file an annual financial report if it intends to solicit contributions in this state or have contributions solicited in this state on its behalf by any other person, or that participates in a charitable sales promotion, is required to register with the Attorney General.
  - a. Exemptions from registration under the solicitation act are provided to charitable trusts that meet **all** of the following requirements.

The trust must:

    - i. be registered under the Ohio Charitable Trust Act;
    - ii. have been in continuous existence in Ohio for at least two years;
    - iii. possess a currently effective 501(c)(3) letter of determination from the Internal Revenue Service, and
    - iv. have filed an annual report with and paid the required fee to the Attorney General pursuant to the Trust Act.

## **EXCEPT ENTITIES:**

There are two exemptions from charitable trust registration:

- 1) Those formed before November 19, 1975. These trusts may be grandfathered in pursuant to 109.26 OR

2) If the trust falls into one of the categories described under 109:1-1-02(B)(1-9).

### **DETERMINATION LETTERS:**

Any person or organization desiring a determination by the Attorney General regarding the application of the above sections, or the Attorney General rules promulgated thereunder, relating to the registration or annual financial report requirements of such person or organization, may request a determination. Such request shall be in writing, setting forth the operative facts, the precise determination requested and the legal reasons which support the requested determination.

In response to any such request, the Attorney General may issue a letter making the determination requested, making any other determination based upon the facts disclosed or may decline to issue a determination letter.

A determination letter shall be binding only as between the Attorney General and the person or organization which requested the same, until revoked by the Attorney General, and may not be relied upon by any other person or organization with respect to any issue, however similar in nature.

### **LINKS:**

[http://www.ag.state.oh.us/sections/charitable\\_Law](http://www.ag.state.oh.us/sections/charitable_Law) - Attorney General's website where Charitable Trust registration forms and rules may be found.

[http://www.ag.state.oh.us/online\\_publications/charitable\\_law/trustinf.htm](http://www.ag.state.oh.us/online_publications/charitable_law/trustinf.htm) - Publication of Charitable Trust laws from the Attorney General's website.

<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=OAC> - This link will take you to Anderson's Publishing online. From there you will need to type in the search box the code section you wish to review.

### **Revised Code Section Numbers:**

109.23 -109.33 – Charitable trust section

1706 – Charitable Organization Section

109.26 – Registration of Charitable Trusts

109.31(C) – Exemption from filing annual reports.

109:1-1-06 – Determination Letters

<http://www.irs.gov/charities/content/0,,id=96986,00.html> – IRS website link for frequently asked questions regarding charitable entity laws and regulations.

<http://www.irs.gov/charities/nonprofits/index.html> - IRS website link for frequently asked questions regarding other non-profit entity laws and regulations.

<http://www.irs.gov/charities/charitable/article/0,,id=96114,00.html> – IRS website link for private foundation rules