



**To:** Member Associations and Districts  
**From:** Washington Youth Soccer  
**Date:** December 16, 2011  
**Re:** Legal Membership in WA Nonprofit Corporations

This memo outlines the meaning and significance of legal membership in a nonprofit corporation. It is written to describe Washington Youth Soccer, but it may apply to Member Associations and Districts as well.

**1. WA Youth Soccer is a Washington nonprofit corporation. WA Youth Soccer is tax exempt under Internal Revenue Code Section 501(c)(3).**

WA Youth Soccer is both a Washington nonprofit corporation, and an organization that is tax exempt under Internal Revenue Code Section 501(c)(3). These two designations are distinct, and have different meanings, implications, and responsibilities for WA Youth Soccer.

Nonprofit corporation law is governed by state law, which typically sets forth the requirements for establishing and maintaining a nonprofit corporation, including governance issues. Failure to follow these requirements may result in loss of the entity's status as a corporation. Thus, as a Washington nonprofit corporation, WA Youth Soccer must follow the requirements set forth in RCW 24.03, the Washington Nonprofit Corporations Act.

Tax exempt status is governed by federal law, specifically the Internal Revenue Code. When a nonprofit applies for tax exemption with the IRS, it must set forth its qualifications for tax exemption, known as its tax exempt purpose. The IRS has a discreet and narrow list of valid tax exempt purposes; each nonprofit applying for tax exemption must show that its work falls in one of these categories. The Code sets forth the requirements that a nonprofit 501(c)(3) must follow in order to maintain its status as a tax exempt organization. Failure to follow these requirements may result in loss of tax exempt status. Loss of tax exempt status means that the organization will have to pay income tax on the revenues it receives. It also means that donations made to the organization may not be tax deductible by the donor as a charitable contribution. Note that this will not necessarily affect the entity's designation as a nonprofit corporation under state law.

It is possible to be a Washington nonprofit corporation and not have tax exempt status under federal law. It is also possible to have tax exempt status under federal law without being a nonprofit corporation (though the organization does need to be organized in some format – partnership, association, etc.).

**2. "Member" is a legal concept governed by Washington State nonprofit corporation law.**

In the nonprofit world, there are colloquial uses of the word "membership". However, legally, the word "membership" has only one meaning, and that meaning is set forth in state law in each state's non-profit corporation act (see, e.g., RCW 24.03.005(6)). Legal members of a nonprofit corporation typically have

some level of control over the governance of the corporation. In this way, they are similar to shareholders in a for-profit corporation in that they have certain legal rights that are set forth in the articles of incorporation and bylaws. These rights typically include voting rights. One important distinction between for-profit and nonprofit corporations is that shareholders of a for-profit corporation own a percentage of the corporation (through the purchase of shares) and are eligible to receive dividends. In the nonprofit world, no one owns the corporation and there cannot be any profit distributed to any persons or entities. Nonprofit corporations have legal members ONLY because they choose to have legal members, not because those members invested in the corporation.

### **3. Articles of Incorporation and Bylaws are the legal governing documents of a nonprofit corporation.**

The Articles of Incorporation set forth the basic organizing principles of the corporation: name, location, registered agent, purpose, member/nonmember, etc. These are filed with the Washington Secretary of State to form the corporation. The Bylaws are an internal document that sets forth the corporation's basic rules for governance and operations. These rules can then be further detailed and explained in policies and procedures. Each of these documents can be modified only by following the procedures set forth in the document (or defaulting to state law if the document is silent).

### **4. Member vs. non-member nonprofit organizations**

Most nonprofits do not have legal members. They are governed solely by a board of directors. When a nonprofit incorporates in the State of Washington, it must state in the articles of incorporation whether or not it has legal members. It must then set forth in the bylaws the rights and responsibilities of those legal members. Typically, members have some level of voting rights that in some way affect the governance of the corporation. In a nonmember nonprofit, those voting rights rest with the board of directors. One potential issue that can arise in nonprofit corporations with legal members is the ability of the board of directors to meet its fiduciary responsibility to the IRS, the public and its constituents if the voting rights of the legal members undermine the board's ability to meet these responsibilities.

### **5. Nonprofit constituents / stakeholders / participants.**

Nonprofits, whether or not they have legal members, do have constituents or stakeholders. They are often referred to as "members" though they are not members in the legal sense. These are the people, groups or organizations that benefit from the nonprofit's work, as set forth in the organization's tax exempt purpose. Fundamentally, the nonprofit has an obligation to the IRS to do its work so as to maintain its tax exempt status. The nonprofit doesn't have a legal obligation to the constituents through its state governing documents. However, it can create an obligation through contracts and other forms of agreement.

## 6. What does this mean for WA Youth Soccer?

WA Youth Soccer has legal members – the Member Associations. This decision was made when the corporation was formed 50 years ago, and it is stated in the governing documents. The bylaws state what those members' rights and responsibilities are.

The Member Associations, under state law and WA Youth Soccer's governing documents, have the following rights:

- To designate a MAR (Member Association Representative) to represent the Association at the Council meetings
- To elect the Board of Directors of WA Youth Soccer
- To approve the player fee
- To be the designated administrative and coordinating organization for WA Youth Soccer in their geographic area
- To have jurisdiction, control and responsibility over their members to administer all games of youth soccer and ensure that the WA Youth Soccer Governing and Operating Documents are followed
- To approve changes to the Articles of Incorporation
- To approve a merger or consolidation involving WA Youth Soccer
- To approve a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of WA Youth Soccer, if not in the ordinary course of business
- To approve the dissolution of WA Youth Soccer

The Member Associations have a number of responsibilities that they must meet in order to maintain their status as legal members. These are set forth in the re-written Article 5 of the Bylaws.

WA Youth Soccer also has participants – the constituents / stakeholders / beneficiaries of WA Youth Soccer's tax exempt work. These are all the organizations and individuals that have the opportunity to access WA Youth Soccer services through a paid "membership" in WA Youth Soccer. This is not a legal membership, and has no effect on governance. It is, in effect, a contract between WA Youth Soccer and that individual or entity in which WA Youth Soccer provides certain benefits or services in exchange for a fee. WA Youth Soccer Bylaws don't address these participants since they don't participate in governance. However, WA Youth Soccer Operating Documents outline the parameters of being a participant in WA Youth Soccer.

***This document is intended to provide general information only. It is not legal advice, and should not be construed in that way. Organizations should consult legal counsel for questions that are specific to their situation.***