

Berkeley Paddling & Rowing Club
Board Meeting Minutes - July 21, 2009
6:30 p.m.- home of Mike Smith

Present: Ellen Braithwaite, Kathryn, Furano, Rachel Haurwitz, Susan Sawyer, Mike Smith, Alex Smoligovets, Jane Toro

1. Minutes of the last meeting were approved with the deletion of the information re: tax status that occurred subsequent to the last meeting.

2. Treasurer's report

We have approximately \$15,000 in the checking account and nearly \$17,000 in the CD. Kathryn did some research into either on-line banking or a regular savings account as alternatives to the CD. On-line banking generally offers the same interest rate, when it is open to groups. (Many on-line banking facilities are open to individuals only.) The CD interest is better than a regular savings account and the penalty for early withdrawal from a CD is only one month's interest. Kathryn recommended that we continue our money in the CD and everyone agreed.

3. Tax report

Mike reported that our tax situation with the IRS has been resolved. His memo with respect to the tax situation is attached.

4. Committee Reports

A. Boathouse - Jane reported that the hose and nozzle had been stolen, but have been replaced. Ellen reported that Charlie is having an electrician looking into rewiring of the boathouse. She also reported that Francis is concerned about the floor rotting away at the front of the boathouse; we should consider redoing the floor in that area

B. Membership - Ellen reported that 25 people came at Learn to Row Day and there have been nine new inquiries in the last two weeks. She is scheduling an open house on August 1, 2009, from 10-12, so all the people who are interested can come at one time.

C. Equipment - Ellen and Kathryn will do an oar inventory and decide on what to purchase for the three new sets of oars that had already been approved. Because there appear to have been no used racing doubles on the market in the last six months, there was a discussion of purchasing a new boat. A new Pocock racing double costs between \$9,350 and \$10,800 depending on weight. There was a discussion of whether we want the new boat to be more racey or more durable. Some thought the new boat should be more racey as we already had a double that was durable; others felt a club boat, used by a wide variety of rowers, needed to be durable above all else.

D. Boat Tallying - Rachel. All club sculls were used a lot. The Wintech still needs the repair of the hole on the side. Three paddling boats were not used at all: the yellow K2 (double-triple that is currently for sale), the aluminum canoe, and the K4. Eight members had not used their boats, stored at the boat house, the required number of times.

5. Old Business

Jane discovered that the requirements for helping Boy Scouts to get their merit badge were quite extensive and well beyond what we could offer in terms of monitoring and supervision. We might be able to help, but unless the Scout leaders provided the badge monitor, this was probably not something we would be able to get involved in.

The by-law committee had not met yet. Mike Smith wanted to get copies of model by-laws for non-profit groups from the Boalt Hall Law Library before the group met. This led to a discussion of whether we should change requirements for membership. Should hours of volunteer work at the club be required, for example, or should people who volunteer get a break in membership dues? Should dues be required of all individuals, as opposed to families. Mike pointed out these are issues we should be thinking about when we update the by-laws. An extensive discussion ensued.

The next Board meeting will be held on September 1, 2009, if a quorum of Board members is available.

Respectfully submitted,
Susan Sawyer, secretary

MEMORANDUM

To: BPRC (“Club”) Board of Directors
From: Michael G. Smith
Subject: IRS Exempt Organizations’ Letter Dated June 11, 2009
Date: 07/20/09

Attached is a copy of IRS Exempt Organizations’ letter to BPRC dated 06/11/2009 (Robert Choi, Director; Michael Condon, Revenue Agent) (“EO Letter”).

1. Summary.

- a. The EO Letter provides BPRC with a favorable response to three tax issues:
 - i. BPRC is not required to file IRS Form 1023 for recognition of tax exempt status as a § 501(c)(3) organization.
 - ii. BPRC is entitled to file its annual return on IRS Form 990 (or 990-EZ) instead of on Form 1120, U.S. Corporation Income Tax Return. Thus BPRC’s net income from exempt purpose activities is not taxable.
 - iii. BPRC is a publicly supported organization (non-private foundation) as defined in IRC § 509(a)(2).
- b. The EO Letter is not an IRS determination letter that officially recognizes BPRC as a tax exempt organization under IRC § 501(c)(3). Lack of official recognition has important ramifications for BPRC and prospective financial supporters.

2. Background.

- a. The EO Letter is in response to and associated with:
 - i. BPRC’s letter and attachments to IRS Exempt Organizations Division dated 05/13/2008 regarding Request for Determination of Non-Private Foundation Status Under IRC § 508(b) (the “§ 508(b) Issue”);
 - ii. BPRC’s letter and attachments to IRS Ogden UT Service Center dated 03/16/2009 protesting Service Center’s rejection of Club’s 2007 IRS Form 990-EZ and demanding that it either file IRS Form 1120 (U.S. Corporation Income Tax Return) or submit IRS Form 1023 (Application for Recognition of Exemption) (the “§ 508(a) Issue”); and
 - iii. BPRC’s Request for Taxpayer Advocate Service Assistance, IRS Form 911, dated 05/01/2009, requesting assistance with both the § 508(a) and § 508(b) Issues.
- b. It appears that the EO Letter addresses adequately both the § 508(a) and § 508(b) Issues. It addresses the § 508(b) Issue by making the determination that BPRC is a publicly supported organization under IRC § 509(a)(2). It appears to address the § 508(a) Issue by stating that BPRC is “not required to file Form 1023 for recognition of exemption,” and is “required to file the Form 990.” That being said, it is important to understand fully the ramifications of BPRC’s unique tax exempt status.

3. BPRC’s Tax Exempt Status.

- a. The EO Letter is not an IRS determination letter recognizing BPRC as a tax exempt organization pursuant to IRC § 501(c)(3). As stated in the Letter: “Your exempt status was not under consideration because you have not requested to be officially recognized and pay the appropriate user fee.”
- b. A determination letter of tax exempt status represents IRS’s official approval of an organization’s exempt status. To receive a determination letter, BPRC would have to (i) prepare and submit a completed IRS Form 1023, (ii) pay a \$750 user fee, and (iii) demonstrate to IRS’s satisfaction, through

the application and perhaps subsequent queries, that Club's organizational structure, goals, and activities meet the requirements of § 501(c)(3). There is no guarantee that IRS would grant the exemption.

- c. What the EO Letter does do is officially acknowledge that because BPRC was formed before 10/10/1969 (specifically, on 03/05/1968), it is entitled to claim, in good faith, that it is tax exempt as an organization described in IRC § 501(c)(3). The considerable authority for this proposition was set forth in BPRC's protest letter to IRS Ogden UT Service Center dated 03/16/2009. So, at this point, IRS neither agrees nor disagrees with BPRC's claim to tax exempt status; it merely agrees with Club's right to make the claim.
- d. There are important practical, and unfavorable, consequences from BPRC's indefinite tax status.
 - i. Because BPRC has not been recognized officially by the IRS as an exempt organization, Club is not listed in: (i) the IRS Exempt Organizations Master File, or (ii) IRS Publication 78, *Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986* ("Pub. 78").
 - ii. Based on 07/20/2009 phone conversations with IRS Agent, Michael Condon, author of the EO Letter, and TE/GE Customer Account Services, the toll-free exempt organizations help line (at 1-877-829-5500), there is no notation in the IRS databases indicating the existence of the EO Letter or the unique "grandfathered" status to which BPRC is entitled. Thus, telephone inquiries to IRS regarding any BPRC tax question are unlikely to yield useful guidance. Based on past experience, one can expect instead to be admonished that it's smart to file a Form 1023 exemption application.
 - iii. Tax deductible contributions. Pub.78 is a list of organizations eligible to receive tax-deductible charitable contributions. A listing in Pub. 78 provides donors with advance assurance that their contributions will be deductible under IRC § 170(a). If a listed organization has subsequently had its tax-exempt status revoked, contributions that are made to it by a donor who is unaware of the change in status will generally be treated as deductible if made on or before the date that the revocation is publicly announced. Donors to an organization that has not received a determination of its tax-exempt status (like BPRC) may also deduct their contributions; but in the event of an audit, the taxpayer bears the burden of establishing that the organization meets the requirements of IRC § 501(c)(3). See Rev. Proc. 82-39, 1982-1 C.B. 759.
 - iv. Grants. Many grant-making organizations (tax exempt charities or governmental units) are authorized to make grants only to § 501(c)(3) entities. In some instances, a grant-making organization may be responsible for supervising a grantee's expenditure of the grant funds unless the grantee's status as a publicly supported organization (non-private foundation as defined in §§ 509(a)(1), (2) or (3)) is clearly documented. Pub. 78 is the official document for resolving these questions. Not being listed in Pub. 78 may effectively disqualify BPRC as an eligible recipient of grant funds. The EO Letter may provide a prospective grantor with some level of assurance, but it clearly lacks the legal and official standing of a listing in Pub. 78.

4. BPRC's Tax Return Filing Requirements.

- a. The EO Letter states that organizations "claiming tax exempt status are required to file the Form 990"
- b. This language should end the dispute with the IRS Ogden Service Center regarding BPRC's right to file IRS Form 990 (or 990-EZ) instead of Form 1120, which is applicable to taxable U.S. corporations. However, as previously stated, there is no notation in the IRS databases indicating the existence of the EO Letter or of BPRC's unique "grandfathered" status. Thus Mr. Condon advises us to always include a copy of the EO Letter with any 990 Form we file. Otherwise, there is a significant chance that IRS Ogden will send us the same form-letter rejection notice we received in response to the 2007 Form 990-EZ.

- c. In my 07/20/2009 phone conversation with Ms. Davis of TE/GE Customer Account Services, she stated that the IRS database indicates that BPRC filed Form 990-EZ for tax year 2007. (Presumably it is too soon for notation regarding Club's 2008 return.) Perhaps, in time, IRS Ogden will just slip into the habit of accepting BPRC's 990 Forms on the grounds that prior year returns have been accepted.
- d. IRS Form 990-N, e-Postcard. Ms. Davis also made a very interesting comment regarding the IRS Form 990-N.
 - i. As I've discussed elsewhere, Form 990-N is an electronic notice that small exempt organizations (gross receipts not exceeding \$ 25,000) must submit online (starting in tax year 2007) if they haven't filed a regular Form 990. In early 2008, Kathryn and I tried to utilize the 990-N online process, but were rejected at the first step, which generates a login ID based upon BPRC's EIN. We were not surprised since BPRC was not included in the IRS Exempt Organizations Master File.
 - ii. Ms. Davis stated that an IRS database entry on BPRC indicates that in April 2009, the BPRC EIN was entered into the 990-N system so that in future years Club could submit IRS Form 990-N as an alternative to Form 990-EZ (assuming the gross receipts test is satisfied).
 - iii. Being skeptical, I later visited the Form 990-N web site: <http://epostcard.form990.org/frmNPRequestLogin.asp> (which is operated and maintained by the Urban Institute).
 - (1) In step 1, I entered the BPRC EIN (94-3112841), and it was accepted!
 - (2) The next screen which gathers additional information for generating a formal login ID (sent by email to the address supplied) returned the following:
 - (a) "Login ID Type: **Exempt Organization**"
 - (b) "Login ID: **94311284101**"
 - (c) "Organization Name: **BERKELY ROWING CLUB**"
 - (3) Aside from the fact that Berkeley is spelled incorrectly, I interpreted this result as confirmation of Ms. Davis's claim that BPRC could now access the Form 990-N filing process if it chose to do so. I aborted the login without supplying the additional requested data (selected password, first and last names, email address, and daytime phone number).
 - iv. As I've explained in detail elsewhere, I strongly recommend that BPRC avoid the Form 990-N e-Postcard notice option and always submit a completed Form 990 (or 990-EZ). The 990 Form will have to be prepared each year in any case because it needs to be submitted to the California Registry of Charitable Trusts.

5. BPRC's Non-Private Foundation Status.

- a. The EO Letter closes this issue retrospectively. Based on past years, BPRC has satisfied the public support requirements of IRC § 509(a)(2): normally receiving (i) more than 33⅓ % of its support from membership fees and gross receipts from tax exempt related activities and (ii) not more than 33⅓ % of its support from gross investment income or unrelated business income. In fact BPRC's actual support is around 90% from membership fees and related activity receipts, and its investment income amounts to only 1% of total support.
- b. However, BPRC (like other public charities) has to continue meeting the IRC § 509(a)(2) support requirements in the years going forward. This is documented on an annual basis by filing Schedule A of IRS Forms 990 or 990-EZ, which requires financial support data for the filing year and four preceding years.