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Expanding the Orbit of Maya Culture: Creating a Non-Profit in the United States

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Abstract. This article explores the process of establishing a branch of the non-profit organization "Archaeologists Without Borders of the Maya World" in the United States. The organization's goal is to promote and preserve Maya heritage, archaeological sites, and culture. The article is divided into three main parts. The first part delves into the captivating history of the Maya culture and the extensive presence of their stone cities across Central America. It highlights ongoing archaeological discoveries and emphasizes the significance of the Maya culture. The second part outlines the steps necessary for creating a foreign non-profit branch in the United States, focusing on the specific example of Georgia. It describes the process of incorporation, obtaining business licenses, and soliciting funds within the state. The article explains the annual requirements, notice obligations, and local licensing procedures for conducting non-profit activities. The third part discusses the potential challenges and solutions related to linking a foreign NGO with a domestic NGO in the U.S. It explains the concept of "Friends of" organizations, which facilitate collaboration between foreign and domestic NGOs while avoiding issues of conduit status. This section also covers the process of applying for federal tax-exempt status, including registering with the IRS and maintaining compliance with annual reporting requirements. In conclusion, the article provides a comprehensive guide for establishing a foreign NGO's presence in the United States while adhering to legal and regulatory requirements at various levels. It emphasizes the importance of maintaining control, complying with tax laws, and fostering collaboration to achieve the organization's mission of preserving Maya heritage.

Keywords: Maya culture, Archaeologists Without Borders, non-profit organization, tax-exempt status, foreign NGO, cultural preservation

Resumen. Este artículo explora el proceso de establecimiento de una sucursal de la organización sin fines de lucro "Arqueólogos Sin Fronteras del Mundo Maya" en los Estados Unidos. El objetivo de la organización es promover y preservar el patrimonio, los sitios arqueológicos y la cultura Maya. El artículo se divide en tres partes principales.

La primera parte profundiza en la cautivadora historia de la cultura Maya y la amplia presencia de sus ciudades de piedra en toda Centroamérica. Destaca los descubrimientos arqueológicos en curso y enfatiza la importancia de la cultura Maya. La segunda parte describe los pasos necesarios para crear una sucursal extranjera sin fines de lucro en los Estados Unidos, centrándose en el ejemplo específico de Georgia. Describe el proceso de constitución, obtención de licencias comerciales y solicitud de fondos dentro del estado. El artículo explica los requisitos anuales, las obligaciones de notificación y los procedimientos de licencia local para realizar actividades sin fines de lucro. La tercera parte analiza los posibles desafíos y soluciones relacionados con la vinculación de una ONG extranjera con una ONG nacional en los EE. UU. Explica el concepto de organizaciones "Amigos de", que facilitan la colaboración entre ONG nacionales y extranjeras evitando problemas de estatus de conducto. Esta sección también cubre el proceso de solicitud del estado de exención de impuestos federales, incluido el registro ante el IRS y el mantenimiento del cumplimiento de los requisitos de informes anuales. En conclusión, el artículo proporciona una guía integral para establecer la presencia de una ONG extranjera en los Estados Unidos respetando al mismo tiempo los requisitos legales y regulatorios en varios niveles. Enfatiza la importancia de mantener el control, cumplir con las leyes tributarias y fomentar la colaboración para lograr la misión de la organización de preservar el patrimonio Maya.

Palabras clave: cultura Maya, Arqueólogos sin Fronteras, organización sin fines de lucro, exención de impuestos, ONG extranjera, preservación cultural.

1 Introduction

Few civilizations have managed to captivate the mind like the Maya. While ancient Maya culture declined precipitously beginning in the 8th century A.D., their great stone cities can be found throughout Central America in Mexico, Guatemala, Belize, Honduras, and El Salvador.¹ New cities and structures are constantly being uncovered by archaeologists and stand as a testament to the Maya's skilled architects.² In the tiny municipality of Puerto Morelos, Mexico alone, there are an estimated 2,000 undocumented Maya sites.³ Similarly, archaeologists in northern Guatemala have used LIDAR to reveal settlements in which millions of Mayas would have lived, fundamentally altering our understanding of the scope of that culture.⁴ In fact, as recently as last year, LIDAR helped archeologists find what they believe is the capital of the Sak Tz'i' kingdom located in the southeastern Mexican state of Chiapas (Goodman, 2020). This discovery marked a major advancement in our understanding of ancient Maya culture, with archaeologists likening it to the discovery of a lost principality in medieval France.⁵ Going forward, LIDAR can help archaeologists continue to find additional important Maya sites.⁶

Archaeologists Without Borders of the Maya World is a Mexican non-profit organization focused on promoting and preserving Maya history, specifically archaeological sites and culture. The organization follows a framework inspired by the World Archaeological Congress and applies this to the Maya world. Archaeologists Without Borders plans to create an organizational branch in the United States to solicit donations and spread awareness of Maya culture worldwide. To create the U.S. partner of the Mexican nonprofit, Archaeologists Without Borders must follow a series of laws at the local, state, and federal levels to establish a non-profit organization with U.S. tax exempt status.

This article consists of three parts. First, we will examine how a foreign NGO might pursue business and fundraising opportunities in the state of Georgia. Second, we will analyze laws governing how to link a foreign NGO to a domestic NGO based in the United States. Finally, we will outline the various legal strategies surrounding a foreign NGO filing for tax exempt status in the United States.

¹ History.com Editors, *Maya*, HISTORY (Sept. 8, 2020), <https://www.history.com/topics/ancient-americas/Maya>.

² *Id.*

³ Private conversations with Lilia Lizama Aranda, an archaeologist from the Yucatan peninsula (18 October, 2018).

⁴ *Sprawling Maya network discovered under Guatemala jungle*, BCC News (Feb. 2, 2018), <https://www.bbc.com/news/world-latin-america-42916261>.

⁵ *Id.*

⁶ *Id.*

1.1 Opening a Foreign NGO Branch in the United States

1.2 Conducting Business in Georgia.

To create a non-profit entity in Georgia, the organization must first incorporate with the state by filing articles of incorporation and publishing notice of the incorporation. The organization then files for a business license in the city in which the non-profit will be based. We have created a flow chart (found in Appendix 3) that graphically depicts each step discussed in this section.

1.3 Starting Your Business.

Before a foreign entity can conduct business in the state of Georgia, it must apply for a certificate of authority.⁷ The application may be completed online through the Georgia Secretary of State website, or a written application may be completed and delivered to the Corporation's Division of the Georgia Secretary of State's Office.⁸ Before beginning the official legal process of starting a non-profit in Georgia, any organization should think through the basic structure and corporate form of the non-profit. They should start by choosing a name for the entity, appointing a board of directors, and deciding on an organizational structure that suits the non-profit's needs best. The entity's organizational structure in the United States may reflect the associated Mexican non-profit's organizational structure, which will be discussed in a later section. After deciding on the organizational structure, the entity should file Articles of Incorporation⁹ with the state of Georgia. Next, they should apply for federal tax-exempt status and, finally, obtain any state and local permits necessary for operation.

1.4 Articles of Incorporation

Preparation. To begin creating the non-profit, Articles of Incorporation ("AOI") must be filed with the Georgia Secretary of State. AOI preparation is governed by O.C.G.A § 14-3-202, which describes what must be included in AOIs. The first requirement is the non-profit's name must

⁷ Georgia Sec'y of State, *How to Start a Charity*, https://sos.ga.gov/index.php/charities/becoming_a_charity (last visited Mar. 24, 2020).

⁸ Georgia Sec'y of State, *Create or Register a New Entity*, https://sos.ga.gov/index.php/Corporations/creating_a_new_entity (click "Foreign Entities" on sidebar) (last visited Mar. 24, 2020).

⁹ See Appendix 1.

satisfy the restrictions in O.C.G.A § 14-3-401.¹⁰ Notably, the name cannot contain language implying the non-profit was organized for any purpose other than what is detailed in their AOI and what is listed in O.C.G.A § 14-3-301. Additionally, the name may not exceed eighty (80) characters in length, which includes spaces and punctuation.

Second, the AOI must include the street address and county of the non-profit's initial office and the address of each incorporator. Third, the articles must contain whether the corporation will have members, which should simply be stated as "the corporation [will or will not] have members." Fourth, the articles must have a statement that the non-profit is organized pursuant to the Georgia Nonprofit Code.¹¹ The Secretary of State's office recommends including the following phrase to satisfy this requirement: "The corporation is organized pursuant to the Georgia Nonprofit Code." O.C.G.A § 14-3-202 gives further suggestions for information that may be included in the AOI, but these are the only requirements.¹² The incorporator must sign the AOI before submitting them to the Secretary of State's office. If the non-profit is pursuing federal tax-exempt status under 501(c)(3), additional provisions are required in the AOI as detailed later in this paper.

Filing. The AOI must be filed via mail or online with the Georgia Secretary of State's office after they are signed. There is a filing fee of \$100. The AOI is effective the day they are received by the Corporations Division of the Secretary of State unless otherwise stipulated. If the Articles are approved, a Certificate of Incorporation will be sent to the applicant.

1.5 Annual Requirement.

Within ninety days of incorporation, the non-profit must file an initial Annual Registration with the Secretary of State's office that lists the organization's three principal officers. The initial Annual Registration should be filed online, and there is a \$30 fee to file. The Annual Registration must be renewed every year between January 1 and April 1.

1.6 Notice Requirement.

¹⁰ The non-profit can reserve a name with the Georgia Secretary of State's office prior to filing the Articles of Incorporation. The reserved name will be held for thirty days.

¹¹ The Georgia Nonprofit Code encompasses Articles 1-17 under Title 14, Chapter 3 of the O.C.G.A.

¹² See Appendix 1 for an example of a non-profit's Articles of Incorporation from the Georgia Secretary of State's office.

The next business day after filing the AOI, the non-profit must publish a Notice of Intent to Incorporate in a newspaper which is the “official legal organ” of the county where the corporation’s office will be located. In Fulton County, the “legal organ” is the *Daily Report* newspaper. The notice should include the name of the non-profit, the fact that the AOI has been filed with the Secretary of State, the non-profit’s address, and the initial registered agent.¹³

1.7 Local Requirements.

Fulton County only licenses businesses located in the Fulton Industrial District. All other businesses are licensed by the cities in which they are located. Therefore, the non-profit should apply for a business license in whichever city the offices will be located. The business license application processes of Atlanta and College Park are very similar, so either location should use the following steps.

1.8 Identification Number.

Before applying for a business license but after incorporating the non-profit with the state, the non-profit should apply for a federal Employer Identification Number (“EIN”; discussed in a later section). The non-profit will also need to register for a Georgia Tax Identification Number with the Georgia Department of Revenue. Registration for a Georgia Tax ID Number is available online through the Georgia Tax Center.

1.9 Business License.

To apply for a business license in College Park or Atlanta, the non-profit must fill out an Occupational Tax Application (called a “New Business License Application” in Atlanta), a SAVE Affidavit, and an E-Verify Affidavit. After filing the business license application, it will be sent to the Zoning Department of either city, which will verify the zoning of the office location. Upon zoning approval, a fire and building inspection may be required. If the application is approved by

¹³ See Appendix 2 for an example of publishing “notice” of a non-profit’s incorporation.

all departments, a business license will be issued by the city. Business licenses must be renewed annually. In College Park, business license application fees are waived for non-profits.

The Occupational Tax/New Business Application includes the non-profit's name, address, type of business, date of incorporation, and the tax ID numbers listed above. Applicants must also fill out a SAVE Affidavit, which confirms the applicant for a business license is legally in the United States or a citizen. Similarly, the applicant will have to complete the E-Verify form, which verifies all employees of the non-profit are legal workers in the United States. Both the SAVE and E-Verify Affidavits MUST be notarized before submission. The College Park Business License Application, SAVE Affidavit, and E-Verify Affidavit can be found under the Business License and Occupation Tax Department on the collegeparkga.com website. The Atlanta Business License Application, SAVE Affidavit, and E-Verify Affidavit can be found under the Department of Revenue "Applying for a Business License" at atlantaga.gov.

1.10 Nonprofit License Application.

The City of Atlanta requires non-profits to apply for a Nonprofit License as well as a business license. The Nonprofit License Application entails many of the same documents as the business license application, including the new business tax application, zoning approval, and notarized SAVE and E-Verify Affidavits. The Nonprofit License Application also requires the organization's IRS Application for Recognition of Exemption (Form 1023), which will be discussed in detail later on.¹⁴

1.11 Soliciting Funds in Georgia.

Once a foreign NGO has been approved to conduct business in Georgia, the NGO must go through a separate process to be able to solicit funds within the state.¹⁵ This process involves multiple steps. The first step requires the NGO to complete and sign a Form C-100 application (the "C-110").¹⁶

¹⁴ Generally, filing a Form 1023 gives the organization 501(c)(3) tax status. This will be discussed in detail a later section.

¹⁵ Georgia Sec'y of State, *Register as a Charitable Organization*, https://sos.ga.gov/index.php/charities/charities_register (last visited Mar. 24, 2020).

¹⁶ Form C-100 can be found at [https://sos.ga.gov/admin/uploads/C-100_\(Initial_and_Reinstatement_Charity_registration\)_update_11.8_.2018_.pdf](https://sos.ga.gov/admin/uploads/C-100_(Initial_and_Reinstatement_Charity_registration)_update_11.8_.2018_.pdf)

This is another simple form requiring information about the NGO. Completing this form registers the NGO as a charitable organization within the state.

The second step involves attaching the NGO's most recently filed financial statement for the preceding fiscal year.¹⁷ The requirements for this statement depend on how much the NGO collected in charitable donations the preceding fiscal year.¹⁸ If the NGO collected more than \$1,000,000 the preceding fiscal year, then it must submit a certified financial statement prepared by an independent certified public accountant (CPA) for that year. If the NGO collected between \$500,000 to \$1,000,000 the preceding fiscal year, then it must submit financial statements for that year that have been reviewed by an independent CPA. If the NGO collected less than \$500,000 the preceding fiscal year, then it can submit financial statements without any certification or review. Finally, if the NGO is newly formed and collected no charitable donations the preceding fiscal year, then it must attach a signed statement from an officer of the NGO attesting to that fact. The third step requires the NGO to complete and attach either IRS Form 990 or Form 990EZ for the preceding fiscal year, unless one of the forms has already been filed.¹⁹ However, if the NGO filed a Form 990N, it then must complete and submit Georgia Form C-200 for the preceding fiscal year.²⁰

The fourth step requires the NGO to file copies of any federal or state tax exemption determination letters received after the initial registration within 30 days of receipt. If the IRS determines that the NGO is tax-exempt, the NGO must submit a copy of that determination letter. If the NGO has not yet received a determination letter, the NGO should provide a written statement that it will comply with this requirement and file a copy of the determination letter within thirty days once it has been received.

Finally, the NGO must include a \$35 registration fee along with the rest of the documents required. All of the documents and the registration fee must be sent to the Charities Division of the Office of Georgia Secretary of State at 2 Martin Luther King Jr. Drive, SE, Suite 317, West Tower, Atlanta, Georgia 30334.²¹

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Georgia Sec'y of State, *Register as a Charitable Organization*, https://sos.ga.gov/index.php/charities/charities_register (last visited Mar. 24, 2020).

²⁰ *Id.*

²¹ *Id.*

2. General Information Regarding Foreign NGOs in the United States

Generally, United States' law imposes no limits or restrictions on the receipt of foreign funding by NGOs operating in the United States.²² Of course, laws that are generally applicable to all Americans may apply to NGOs as well, such as restrictions in receiving contributions from terrorist organizations.²³

Furthermore, The Foreign Agents Registration Act (FARA) is a disclosure statute that requires persons in the United States acting as agents of foreign principles, such as a foreign NGO, to make periodic public disclosure of their relationship with the foreign principle, as well as disclosure of activities, receipts, and disbursements in support of those activities.

2.1 Potential Problem with Using this Method and a Solution.

Opening a foreign NGO branch in the United States does potentially pose at least one major problem. While such organizations are exempt from paying taxes on their income (assuming they obtain tax-exempt status), contributions to foreign organizations are not tax deductible for contributors. This could greatly impede the NGO's ability to collect contributions within the United States, even if the organization meets all legal requirements to solicit tax-exempt funds. However, this problem may be bypassed if there is a special treaty providing otherwise between the United States and the NGO's country of origin.²⁴

In the case of the United States and Mexico, there exists an income tax treaty that makes contributions to Mexican charitable organizations deductible if and to the extent the contribution would have been treated as a charitable contribution to a public charity created or organized under U.S. law (Dell & Polma, 1995).

3. Creating a Domestic NGO Linked with a Foreign NGO

²² Bureau of Democracy, Human Rights, and Labor, *Non-Governmental Organizations (NGOs) in the United States*, U.S. DEP'T OF STATE (Jan. 20, 2017), <https://www.state.gov/non-governmental-organizations-ngos-in-the-united-states/>.

²³ *Id.*

²⁴ *Id.*

3.1 Registering the Domestic NGO.

This section briefly discusses how to create a new, domestic NGO based in the United States that can then be linked to the foreign NGO already in existence. It then goes on to describe the problems that can come with utilizing this method. Finally, this section will provide advice and solutions for how the NGO can avoid such problems.

All the state and federal registration requirements are the same as the requirements for registering a foreign NGO in the United States with one exception. Rather than requiring the NGO to complete a form to conduct business in Georgia as a foreign entity, it must instead complete a form to create a domestic entity. This can be done either online at the Georgia Secretary of State website or via a written application sent to the Corporations Division at the Georgia Secretary of State's Office.²⁵

3.1.1 Potential Problems of Linking with a Foreign NGO.

In order for United States citizens to receive tax deductions for contributions, foreign NGOs often establish what is commonly referred to as a "Friends of" organization. The name stems from the use of "friends of" wording in the organization name, such as "American Friends of the Louvre."²⁶ Note that the organization does not necessarily need to have such a term in the name. The main benefit of setting up the NGO this way is that, if done properly, the domestic NGO can avoid being deemed a "conduit" of the foreign NGO (Bjorklund & Reynoso, 2005). If the IRS determines the United States NGO is a "conduit," they will disregard the United States NGO in determining the deductibility of donations and instead rely on the tax status of the funds' end recipient (Perlman, 2017). Thus, the IRS would look at the tax status of the foreign NGO and base deductions off of their status. Further, the IRS can rescind the tax-exempt status of the United States "Friends of" organization if it finds that the sole purpose of the organization is to raise and transmit funds to a non-tax-exempt entity (Perlman, 2017).

To avoid being deemed a "conduit" by the IRS, the United States "Friends of" organizations must maintain discretion and control over funds solicited within the United States. It is still allowable that the United States organization directs most or even all of its funds to support to foreign NGO.

²⁵ Information needed before filing can be found at https://sos.ga.gov/index.php/Corporations/creating_a_new_entity (click "Domestic Entities" on sidebar).

²⁶ *Id.*

But all funding decisions must be made on a per-grant or per-project basis by the United States NGO and cannot be explicitly promised or committed to the foreign NGO as part of the organization's legal structure (Bjorklund & Reynoso, 2005). In other words, the U.S. NGO must have the right to say "no" to the foreign parent.

3.1.2 Potential Solutions to Avoid "Conduit" Status While Maintaining Control.

There are three ways to avoid "conduit" status. The easiest and most common way for "Friends of" NGOs to avoid conduit status while achieving the foreign NGO's goals is through the United States organization's bylaws. The bylaws can name the foreign NGO as the sole member of the United States organization with the right to appoint and remove all directors at will (Pearlman, 2017). The IRS generally requires that the majority of an organization's directors are U.S. citizens who are not affiliated with the foreign NGO, but some of these appointed directors may or may not be persons on the foreign NGO's own board (Bjorklund & Reynoso, 2005). This structure allows the NGO to replace directors if they are not fulfilling their charitable purpose or are harming the foreign NGO's reputation. However, the foreign NGO should not replace directors simply because the organization fails to give money to the foreign NGO (Perlman, 2017). This could be considered abuse of control and lead to a loss of the United States organization's tax-exempt status. A second way for "Friends of" NGO's to avoid conduit status is by registering the name of the NGO as a trademark in the United States, provided that the NGO has used the name of the United States organization in interstate commerce. If the NGO qualifies for trademark protection, it can then license the name to the United States organization. The license's terms can include requirements to support the foreign NGO's charitable programs and maintain its reputation. In the event this agreement is breached, the foreign NGO can simply disallow the United States organization from using its name. This action then frees the foreign NGO to start a new United States organization and license the trademarked name to it instead.

A final way for "Friends of" organizations to avoid conduit status is through affiliation agreements. Affiliation agreements can limit the activities of the United States organization. The agreement must still give the United States charity enough discretion over its operations and funds to avoid being deemed a conduit by the IRS. Thus, the agreement as a whole must be carefully tailored to give the foreign NGO as much control as possible while not tipping the scales and turning the

United States organization into a conduit (Perlman, 2017). An example of an action that would tip the scales would be if the agreement had a provision giving the foreign NGO expenditure control over the U.S. NGO (Bjorklund & Reynoso, 2005). However, the separate provisions of the agreement can still create increased control for the foreign entity (Pearlman, 2017).

4. Tax Exemption

Non-profit organizations can obtain a tax-exemption by registering their organization with the U.S. Internal Revenue Service (“IRS”). This section discusses the process for doing so by first looking at how Foreign NGO’s can obtain the federal tax-exemption. Then, it covers how an organization can apply for a Determination Letter granting tax-exempt status (represented graphically in Appendix 5). Next, the section covers what annual requirements and disclosures organizations must make in order to keep their exempt status (represented graphically in Appendix 6). Finally, this section addresses how the non-profit tax-exemption might apply to an NGO partnership.

4.1 Registering a Foreign NGO for Federal Tax-Exempt Status.

The process for obtaining tax exempt status in the United States as a foreign NGO is the same as that for domestic U.S. NGOs. The only requirement is filling out the IRS Form 1023.²⁷ Form 1023 is a simple, though lengthy, form outlining the NGO’s organization and goals.²⁸ Once the form is filled out and submitted to the IRS, the IRS will review the form and decide whether to grant the applicant tax-exempt status. If the IRS approves the application, the NGO will receive a determination letter from the IRS confirming tax-exempt status and providing information about contributions and charitable tax-deductions.

4.1.1 Applying for Exemption.

NGOs can obtain preferential tax status in the United States by seeking an exemption under 26 U.S.C. § 501. This code section exempts certain entities from taxation inside the U.S. Benefits

²⁷ *Non-Governmental Organizations (NGOs) in the United States*, U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, H.R., AND LAB. (Jan. 20, 2017), <https://www.state.gov/non-governmental-organizations-ngos-in-the-united-states/>.

²⁸ I.R.S. Form 1023 can be found at <https://www.irs.gov/pub/irs-pdf/f1023.pdf>.

include: (1) exemption from federal income tax; (2) contributions are made tax deductible; (3) possible exemption from state taxes; (4) reduced postal rates; (5) exemption from federal unemployment tax; and (6) ability to obtain tax-exempt financing. There are more than twenty-five entity designations, each with their own annual reporting requirements; however, we only focus on the 26 U.S.C. § 501(c)(3) classification because it is the most applicable designation to our scenario.²⁹

To apply for 501(c)(3) tax exempt status, the NGO must request a “determination letter” from the Internal Revenue Service (“IRS”) via an online filing. In doing so, the NGO must complete either a Form 1023 (*Application for Recognition of Exemption*) or Form 1023-EZ (*Streamlined Application for Recognition of Exemption Under Section 501(c)(3)*). Form 1023-EZ is a simplified version of the Form 1023 and is reserved for “smaller organizations”.³⁰ A “smaller organization” is defined as an entity: (1) with assets totaling 250,000 USD or less³¹, (2) annual gross receipts totaling 50,000 USD or less in the current and next 2 taxable years, and (3) annual gross receipts totaling 50,000 USD or less in each of the last 3 years the organization has existed.³² However, foreign entities cannot use Form 1023-EZ and must use Form 1023.³³ Additionally, Section 6.05(2) of Revenue Procedure 2020-5 lists several other Form 1023-EZ disqualifying factors, notably: (1) failing to have a US mailing address, (2) entities that are not corporations, unincorporated associations, or trusts, (3) for-profit entities or their successors, (4) partnerships, (5) entities that maintain or intend to maintain one or more donor advised funds, (6) private operating foundations, and (7) entities currently or were previously exempt under another subsection of 26 U.S.C. § 501(c).³⁴

²⁹ “Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” 26 U.S.C. § 501(c)(3) (2020).

³⁰ DEP’T OF THE TREASURY, I.R.S., PUBLICATION 557, TAX-EXEMPT STATUS FOR YOUR ORGANIZATION (2020).

³¹ Fair market value is used to determine asset value.

³² Rev. Proc. 2020-5, 2020-1 I.R.B. 241. The IRS has a worksheet that must be filed out called the “Form 1023-EZ Eligibility Worksheet” prior to using a Form 1023-EZ. For more details on what could make an organization ineligible for a Form 1023-EZ, please see *Instructions for Form 1023-EZ*, <https://www.irs.gov/pub/irs-pdf/i1023ez.pdf> (last visited February 17, 2021).

³³ *Id.*

³⁴ *Id.*

Both Form 1023 and Form 1023-EZ require the NGO to: (1) have an Employer Identification Number (“EIN”), (2) signature by authorized individuals under penalty of perjury, and (3) a user fee payment. In addition to these, Form 1023 requires the submission of: (1) organization documents, (2) a statement of proposed activities, and (3) a statement of balance sheets and receipts for the current and previous 3 years.³⁵ Further instructions can be found on the Form itself.³⁶ These procedures are updated annually.

4.1.2 Annual Requirements and Disclosures.

Most 501(c)(3) organizations are subject to annual IRS filing requirements (also called annual “returns”). An annual return’s primary purpose is to provide the IRS and general public with information about the filing organization’s various programs, activities, relationships, transactions, and governance in addition to revenues, expenses, and asset holdings. Few organizations are exempt from this rule, the most common one being churches; however, our organization would not fall under any exemption.

There are four form types applicable to 501(c)(3) entities: (1) Form 990, (2) Form 990-EZ, (3) Form 990-N, and (4) Form 990-PF. Which form and what must be disclosed depends on organization classification and financial status. There are two classification types: “public charities” and “private foundations”. Forms 990, 990-EZ, and 990-N only apply to organizations that qualify as a public charity while Form 990-PF applies only to private foundations.

In short, an organization qualifies as a public charity where it meets three tests: (1) the Purpose Test, (2) the Public Interest Test, and (3) the Income Test (also known as the “Public Support Test”) (McRay, 2015).

The Purpose Test is met if the entity was organized exclusively for a 501(c)(3) purpose. This purpose must be explicitly stated in an organization’s Articles of Incorporation.³⁷ The Public Interest Test is met if more than 50% of the entity’s board of directors is unrelated by blood,

³⁵ If an NGO has been in existence for less than 3 years, then only must submit statements for those years. If an NGO has yet to exist for one accounting period, then must submit a proposed budget for two accounting periods and a current statement of assets and liabilities. Rev. Proc. 2020-5, 2020-1 I.R.B. 241.

³⁶ *About Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, IRS, <https://www.irs.gov/forms-pubs/about-form-1023> (last visited February 17, 2021).

³⁷ *Id.*

marriage, or outside business interests.³⁸ Additionally, these members cannot be compensated as employees of the organization. Finally, generally speaking, the Income Test is met if at least one-third of the entity's financial support comes from donors who account for less than 2% of the entity's total receipts (McRay, 2018). This excludes donations from other public charities and the government. If all three tests are met, then an organization can qualify for tax exemption as a public charity.

A 501(c)(3) is, by default, a private foundation unless it qualifies as a public charity. The key difference between the two is a public charity directly involves itself in activities that go towards its stated purpose (i.e. operating a homeless shelter), whereas a private foundation acts more or less as a donor to other individuals or charities associated with its purpose (Cardin, 2019). Establishing a public charity over a private foundation has several benefits including a higher tax-deduction allowed for donors.³⁹ Additionally, because public charities solicit funds directly from the community and thus have to appeal to public sentiment, donors are more comfortable donating them over private foundations where funds come from a singular benefactor.⁴⁰

If a 501(c)(3) is a private foundation, the analysis ends, and the organization must fill out a yearly Form 990-PF return; however, should the 501(c)(3) be a public charity, what return they submit depends on their financial status. There are three financial statuses identified on the IRS's website, each with its own accompanying set of forms:⁴¹

- (1) Organizations with gross receipts less than or equal to \$50,000 only need to file Form 990-N;
- (2) Organizations with gross receipts over \$50,000, but less than \$200,000, and with less than \$500,000 in total assets can file either Form 990-EZ or Form 990;
- (3) All other public charities have to submit Form 990. Form 990-N is the simplest to fill out followed by Form 990-EZ. All forms may be submitted to the IRS electronically.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ IRS, *Form 990 Series Which Forms Do Exempt Organizations File Filing Phase In* (July 14, 2020), <https://www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in>.

Additionally, if a 501(c)(3) has a “related organization”, the 501(c)(3) must fill out a Schedule R form and attach it to its annual return. These organizations include: (1) parent organizations, (2) subsidiaries, (3) brother or sister organizations, (4) sponsoring organizations, and (5) supporting organizations.

4.1.3 Applying Tax Exemption to NGO Partnerships.

A foreign NGO partnering with a domestic U.S. NGO has two options, each with two separate filing requirements. Should the partnering NGO forgo creating a separate US entity, the NGO would have to fill out Form 1023 because it would have to register as a foreign entity. Alternatively, should the NGO create a separate, partnering organization inside the USA, it is likely the new entity would only have to fill out the simplified Form 1023-EZ. This is dependent on the business structure and activities of the new NGO (i.e. whether it is an LLC, partnership, etc.) and whether the entity qualifies as a “smaller organization”. In either case, the NGO or new NGO will have to have an EIN and pay a user fee.

An EIN, also known as a Federal Tax Identification Number, is used to identify a business entity. It is free to obtain and can be done electronically via the IRS’s website.⁴² In order to apply, the NGO must already exist as a valid business. Additionally, the NGO must apply for a new EIN every time there is a change in business structure or ownership. As previously stated, the NGO must have an EIN before applying for 501(c)(3) tax exempt status.

Should our partnering NGO choose to create a separate organization, its activities will determine whether it is a public charity or private foundation. If it solely exists as a fundraising tool for its Mexican counterpart, it will likely be classified as a private foundation. However, if, in addition to fundraising, it provides educational services, it is likely the NGO could obtain public charity status. This would be preferable for two reasons: (1) depending on the NGO’s financial status, it could make the organization’s annual return a simpler process, and (2) it would allow donors to claim a greater tax exemption on their personal returns. In either case, the NGO will have to file a Schedule R in addition to the 990 series form due to its activities as a fundraiser for the Mexican NGO.

⁴² IRS, *Employee ID Numbers* (Nov. 25, 2020), <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers>.

5. Conclusion

To start a branch of Archaeologists Without Borders of the Maya World in the United States, the organization should decide what corporate structure best suits their needs. As detailed above, there are a series of steps the organization must take at the local, state, and federal levels to ensure the U.S. non-profit can receive donations and gain tax exempt status. At the state and local levels, this includes: (1) filing Articles of Incorporation, (2) obtaining a state tax identification number, and (3) complying with local licensing standards. At the federal level, new non-profits need to: (1) obtain a federal employer identification number, (2) obtain a tax exemption determination letter from the IRS, and (3) meet annual filing requirements.

First, Archaeologists Without Borders of the Maya World must decide which path to take. It can either open a new branch in the United States while keeping the same organizational structure, or it can create an entirely new organization in the United States that will be linked with the foreign organization already in existence. The first option is simpler in theory, allowing Archaeologists Without Borders of the Maya World to maintain its structure, including keeping the same board of directors, as well as maintaining full control over the organization's funds. However, contributions to foreign organizations are generally not tax-deductible, absent a treaty allowing otherwise. The second option avoids that issue, but raises one of its own: control. When choosing that option, the foreign organization must be careful to allow the US organization to exercise a significant level of control over itself. This includes having a different board of directors, a majority of whom are US citizens, as well as allowing the US organization discretion over funding. That is not to say this option makes it impossible to achieve the goals of the foreign organization, it simply makes it more difficult.

Next, the non-profit must organize as a business entity in the United States. To do so, the organization should file Articles of Incorporation with the Georgia Secretary of State's office and publish a notice of incorporation. The non-profit can then obtain business licensure from the municipality in which it is headquartered. After completing these steps and being approved as a business in the United States, the non-profit may file for tax exempt status.

Finally, as mentioned in the Tax Exemption section, an organization's corporate purpose and primary funding mechanism is crucial for determining tax exempt status. A public charity has

limits on where the majority of their funding comes from; however, unlike private foundation donors, charity donors are granted a higher tax deduction for their contributions, which could encourage greater giving.

6. References

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Appendix 1

Articles of Incorporation are a legal document that establishes a corporation as a legal entity and must be filed with the Secretary of State's office. Various templates to help create Articles of Incorporation can be found online with a simple Google search. Below is one example for non-profits in the US state of Georgia:

ARTICLES OF INCORPORATION
OF
(Enter exact name of corporation)

I.

The name of the corporation is (enter exact name of corporation).

II.

The corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

III.

The street address of the initial registered office of the corporation is (**must be located in Georgia** list the street name and number, city, county, Georgia and zip code. A post office box (P.O. Box) is not acceptable), and the initial registered agent of the corporation at such address is (list the name of the agent, who can be an individual or corporation whose address is identical to the registered office above.)

IV.

The name and address of each incorporator is (list name and address of each incorporator).

V.

State whether or not the corporation will have members.

VI.

The mailing address of the initial principal office of the corporation is (list exact mailing address of the corporation's main office.)

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation.

This _____ day of _____, 20__.

_____,
(Name of Incorporator)

Appendix 2

When incorporating a non-profit in Georgia, the Secretary of State's office requires a business to publish a notice of incorporation in the "official legal organ" of the county. For example, the Daily Report is the official legal organ of Fulton County (which contains the city of Atlanta).

NOTICE OF INCORPORATION

Dear Publisher:

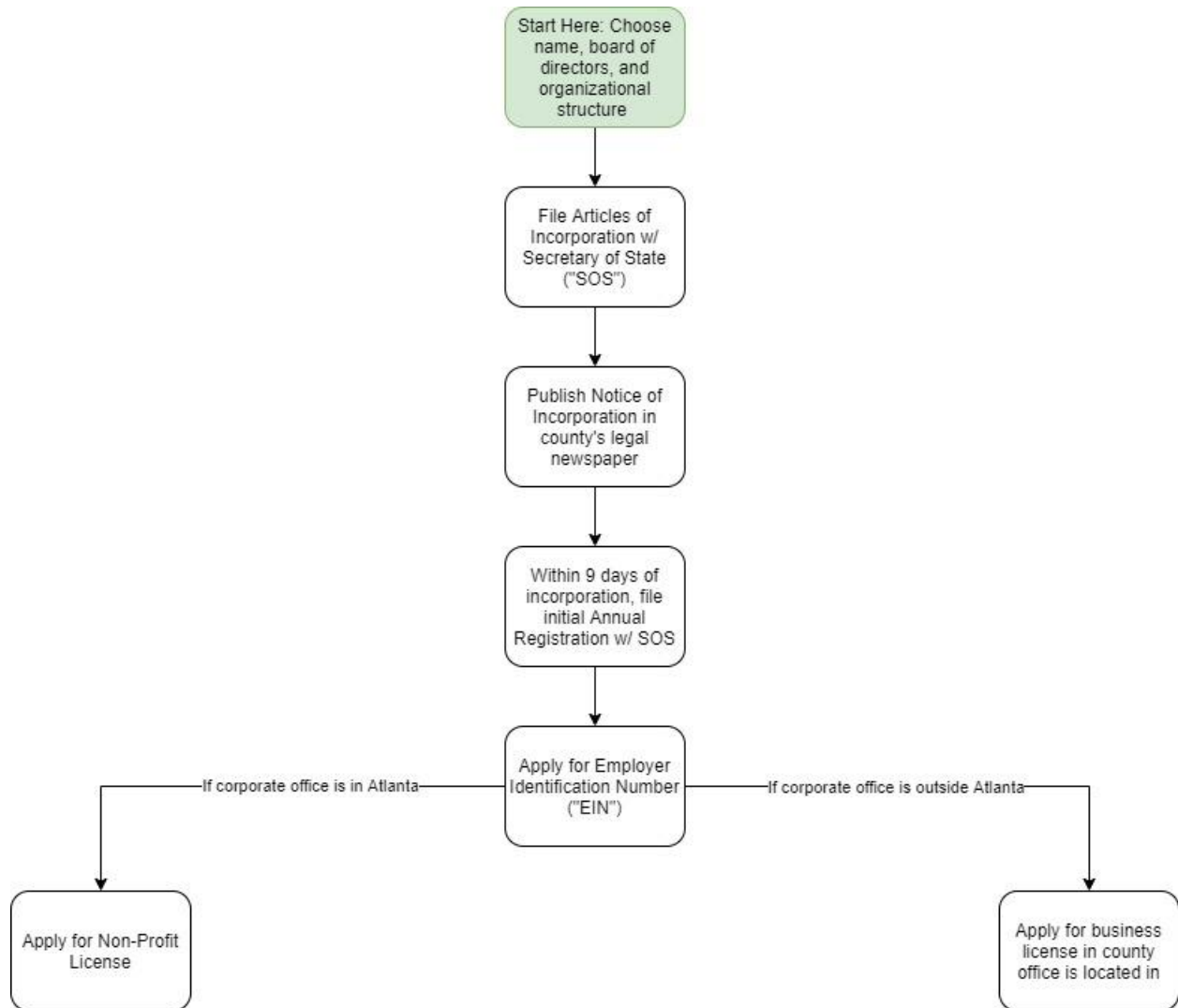
Please publish once a week for two consecutive weeks a notice in the following form:

Notice is given that articles of incorporation that will incorporate (Name of Corporation) have been delivered to the Secretary of State for filing in accordance with the Georgia Nonprofit Corporation Code. The initial registered office of the corporation is located at (Address of Registered Office) and its initial registered agent at such address is (Name of Registered Agent).

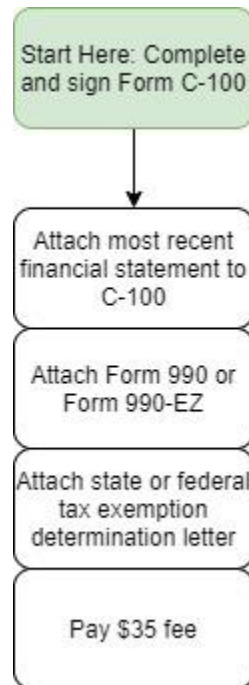
Enclosed is (check, draft or money order) in the amount of \$40.00 in payment of the cost of publishing this notice.

Sincerely,
(Authorized signature)

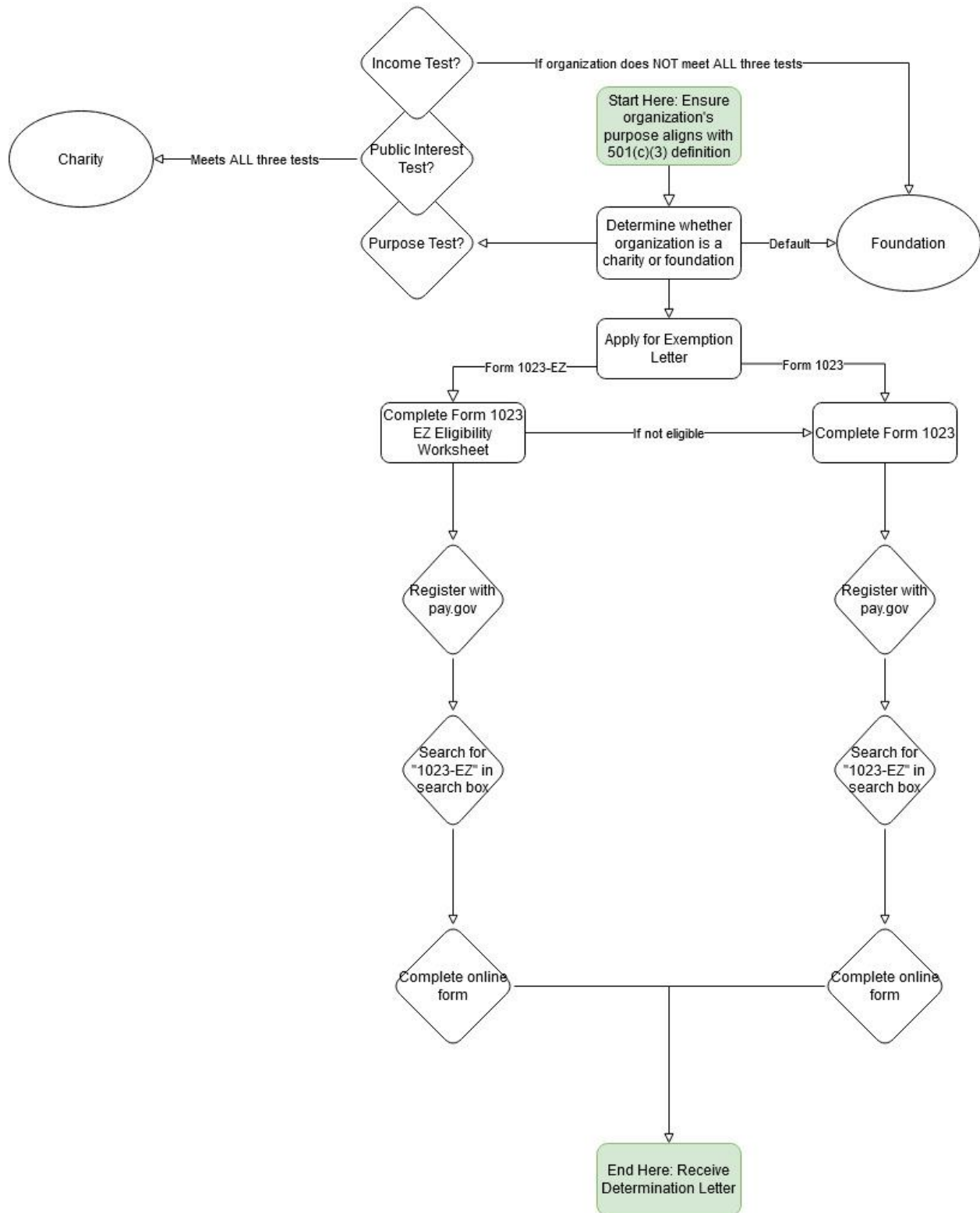
Appendix 3



Appendix 4



Appendix 5



Appendix 6

