



# READY REFERENCE PAGE

NO. 141  
FOR YOUR FILE

## What's the deal with Damar Hamlin's charity?

*It isn't recognized by the IRS  
and has not registered for charitable solicitation*

The explosive growth of Damar Hamlin's charity following the Buffalo Bills safety's cardiac arrest and resuscitation in the Bills-Bengals Monday Night Football game January 2 provides a vivid example of the intricate, inadequate, patchwork and archaic nature of charity regulation in the U.S.

Hamlin's organization, the Chasing M's Foundation, which before the injury was seeking \$2500 in crowdfunding to pay for toys for kids in his mother's day care center, raised more than \$8.5 million in contributions from more than 200,000 donors in the week following his injury. But it is not now federally recognized as a "charity," which means that the contributions are not tax deductible. And although it has solicited for charitable contributions, it has not registered to solicit charitable contributions in its home state of Pennsylvania or apparently in any of the other 38 states and the District of Columbia that require registration prior to solicitation of charitable contributions within their jurisdictions

The legal issues and the possibilities of righting the situation have been comprehensively described in two articles by Daniel Libit, a reporter for Sportico, an online newsletter covering the business of sports, in articles published [Thursday](#) and [Saturday](#) after the injury.

The Chasing M's Foundation is a Pennsylvania nonprofit corporation formed in May, 2020 to provide scholarships and promote education for high school and college athletes. (The M in the name stands for "millions" according to the Sportico article.) Although it is a nonprofit corporation, it is not recognized as a charity by the Internal Revenue Service. ([See Ready Reference Page: "What Do We Mean When We Say 'Nonprofit'?"](#))

According to the language of the articles of incorporation that was read to me, the articles of incorporation do not include the type of "magic language" requiring exclusively charitable activity which is required by the IRS to recognize charitable exempt status under section 501(c)(3) of the Tax Code. ([See Ready Reference Page: "Articles of Incorporation Establish Basic Form of Nonprofit Corporations"](#))

### Retroactive Exemption

An organization seeking recognition of charitable exemption by filing Form 1023 can get such recognition retroactively to the date of its creation if it files its application within 27 months of the end of the month in which the organization was legally formed. Although that date has passed for the Chasing M's Foundation, the IRS has the authority to waive the requirement if the organization had reasonable cause for the delay.

Interestingly, an organization claiming to be a public charity that anticipates annual gross revenues of \$5000 or less is not required to file an application for recognition of exemption. (This is provided in section 508(c)(1)(B) of the Tax Code, the same section 508 that authorizes churches not to file for recognition of exemption in 501(c)(1)(A).) The foundation would be required to file an annual Form 990-N to report its continued existence, however, or it would lose the exemption it claimed after a failure to file for three years. The IRS is known to have rejected Form 990-N from organizations for which it has no recognition of exemption on file.

The original articles of incorporation state that it is a non-member corporation and name Hamlin as the sole incorporator. No one was listed as a member of the board of directors (which is permitted but not required under Pennsylvania law), and the Sportico reporting says that a board will be formed in order to proceed with the work of the foundation. Presumably the charitable purposes will be expanded in view of the amount of money available to it.

Even if Chasing M's Foundation does not claim the less than \$5000 revenue reason for the delay, it can claim simply that it was a small, volunteer, unsophisticated organization that didn't realize it should have filed. The IRS routinely withholds recognition from organizations whose governing documents do not meet the legal requirements and grants recognition retroactively when the documents are satisfactorily amended. It seems unlikely that the IRS would deny a retroactive recognition in this situation.

## **Income Tax Deductibility**

The principal benefit of retroactive exemption would be to provide deductibility for the contributors, although many of them would not be in position to take advantage of the deduction even if it becomes available. Reportedly more than 90% of taxpayers now utilize the standard deduction and get no separate economic benefit for deducting charitable contribution. Congress was asked to extend the \$300 deduction that had been available to all taxpayers during 2020 and 2021 because of Covid, but did not extend the benefit in the omnibus spending bill recently passed for the 2023 fiscal year. It is possible, though probably unlikely, that Congress will reinstate some form of "universal deduction" for 2022 and 2023 at some later time.

For those who do itemize and want to claim the deduction, those who claim \$250 or more will require a contemporaneous written acknowledgment that says whether any goods or services were received in return for the gift. ([See Ready Reference Page: "IRS Requires Substantiation of Contributions"](#)). Since the GoFundMe platform on which the contributions were made apparently did not solicit the contributions as tax-deductible charitable contributions, the receipts that were given may not satisfy the technical requirements.

The Tax Code has another requirement for organizations that solicit contributions that are not tax-deductible. Section 6113 of the Tax Code requires a specific notification of the non-deductibility as charitable contributions if the total of such contributions to the organization normally exceeds \$100,000 in any year. Will Chasing M's be required to give that notice to all of its contributors?

## **Charitable Solicitation Registration**

An organization soliciting money for a charitable purpose does not have to be recognized as a charitable organization to trigger the registration requirement. Registration is required by anyone soliciting in whole or in part for a charitable purpose, which Pennsylvania law defines to include "any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary objective." The requirement to register is not dependent on whether the solicitor is a recognized charity, or whether the gifts would be deductible for federal tax purposes. There are many crowd fundraisers to provide funds to help specific individuals who face difficult times, even though, as gifts for specific individuals, they would not be deductible for federal income tax purposes.

There is an exception to the registration requirement in Pennsylvania, and in many other states, where a solicitor has received only a small amount of contributions. In Pennsylvania, registration is not required if less than \$25,000 is received and if no one is compensated for conducting such solicitations. Once an organization receives more than that amount, it must register within 30 days after the contributions are received.

Pennsylvania has a relatively active Attorney General and is used to dealing with solicitations by unregistered solicitors. It is also used to dealing with crowd funding for non-deductible purposes. The AG's primary effort in such cases is to assure that the funds raised are used for the purposes for which they are solicited and not for the personal benefit of the solicitors.

The Pennsylvania Deputy Attorney General for charities told Sportico that the GoFundMe solicitation for Chasing M's is subject to the provisions of the state's charitable solicitation registration act and that the office was aware of the situation. The state attorney general also has separate general jurisdiction to oversee the activities of any nonprofit corporation, whether charitable or not, and whether it is soliciting charitable contributions or not. According to Sportico, the Hamlin family has assured the public that none of the funds will be used for Hamlin's personal care or benefit.

Some states have taken the position that merely having a "donate now" button on a website constitutes charitable solicitation within their jurisdiction and have required registration whether or not anyone from their state actually gives to the organization. Some states are more willing than others to waive fines and penalties for organizations that register before being "caught" by states in which they are not registered.

Assuming that Chasing M's seeks to register belatedly in all of the registration states, will the registration offices seek to impose penalties? Probably most states will not be so hard-hearted, but it will require a state-by-state series of requests.

To show a little more of the regulatory conundrum, the GoFundMe platform on which Chasing M's sought to raise the money was supposed to be regulated under California's new crowdfunding regulation statute as of January 1, 2023. ([See \*Nonprofit Issues\*<sup>®</sup>, Vol. XXXI, No.3](#)) California has postponed the effective date of the statute for a year, however, because it can't agree on its proposed regulations. How soon California gets it together to exercise its jurisdiction, and how long it takes until other states follow suit remains to be seen.

## **An Alternative Path**

In its follow-up reporting, Sportico reports that Chasing M's Foundation has "partnered" with The Giving Back Fund, a national charity "umbrella organization," to "facilitate all of the contributions, activities and allocations from Jan 2, 2023, and going forward."

Chasing M's spokesperson is quoted as saying that "the family is now advancing the process to complete the nonprofit status for the original entity." The nonprofit status was completed when the corporation was formed. The charitable status has not been recognized.

It clearly makes sense to work with a nationally recognized charity which is also nationally registered to seek charitable contributions where required and experienced in the legal and administrative requirements for large-scale charitable activities. Giving Back Fund and GoFundMe were reportedly working to move the campaign to new charitable auspices and to a new processing portal. How much of this transfer can be accomplished retroactively, and how much Chasing M's will still have to do to overcome its earlier issues is not entirely clear at the moment.

## **YOU NEED TO KNOW**

*While this is an extraordinarily unusual mess, it does suggest the importance of thinking about how to structure a charitable activity before it starts, and why it is important to consider what might be required if it becomes successful beyond the founder's wildest dreams. For a grantmaking activity, it often suggests opening a donor advised fund at an experienced community foundation or one of the commercial donor advised fund groups. The DAF sponsors can pay for the legal and tax work while charging generally small fees for administration of the fund. As easy as it may seem to an outsider, running a charitable organization delivering direct charitable services is not an easy thing to do.*