

CHABAD WEBINAR SERIES: NONPROFIT INCORPORATION

March 19, 2014

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Overview of Incorporation Process

1. Incorporate as a nonprofit in your state
2. Apply for an Employer Identification Number with the IRS
3. File for Federal tax exemption with the IRS
4. File for State tax exemption with the relevant department (generally secretary of state)
5. Report to the IRS and relevant State departments

1. Incorporate as a Nonprofit

Step 1: Write **Articles of Incorporation**, the charter for the organization, and file them with the state to receive **Certificate of Incorporation**

Articles must include:

- Name of corporation
- Term of Existence
- Addresses for organization and initial Board of Directors
- Plans for dissolution

Remember:

- The IRS requires particular language in the Articles of Incorporation for tax-exempt status (see IRS Pub 557: Tax-Exempt Status for Your Organization)
- Each state may have its own additional requirements, be sure to consult the relevant state agency before filing

1. Incorporate as a Nonprofit

Although bylaws are not required to file for 501(c)(3) status, they will help you in governing your organization and complying with IRS regulations.

Furthermore, State law may require nonprofit corporations to have bylaws.

Best Practices: Write **Bylaws**

- Governing principles of the organization
- State how the organization will operate, its goals and directives
- The common format is as follows:
 - Name of the organization
 - Mission of the organization (one or two sentences that state why your organization is being formed/what it intends to accomplish, who will benefit from the organization's accomplishments and how the organization will go about achieving its purpose)
 - Membership (Responsibilities, Dues, Quorum, Voting Procedure)
 - Board of Directors (Duties, Officers, Meetings)
 - Committees
 - Procedures for amending the bylaws
 - Date bylaws adopted

2. Get an Employer Identification Number

- Employer Identification Numbers (EINs) are issued for the purpose of tax administration
- To obtain one, you must file with the IRS as a nonprofit
- You can do this by paper or fax (IRS Form SS-4), via telephone, or online

Form SS-4 (Rev. January 2010) Department of the Treasury Internal Revenue Service		Application for Employer Identification Number (For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.) ▶ See separate instructions for each line. ▶ Keep a copy for your records.		OMB No. 1545-0003	
				EIN	
Type or print clearly.	1 Legal name of entity (or individual) for whom the EIN is being requested				
	2 Trade name of business (if different from name on line 1)	3 Executor, administrator, trustee, "care of" name			
	4a Mailing address (room, apt., suite no. and street, or P.O. box)	5a Street address (if different) (Do not enter a P.O. box.)			
	4b City, state, and ZIP code (if foreign, see instructions)	5b City, state, and ZIP code (if foreign, see instructions)			
	6 County and state where principal business is located				
	7a Name of responsible party		7b SSN, ITIN, or EIN		
	8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input type="checkbox"/> Yes <input type="checkbox"/> No		8b If 8a is "Yes," enter the number of LLC members ▶		
	8c If 8a is "Yes," was the LLC organized in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No				
	9a Type of entity (check only one box). Caution. If 8a is "Yes," see the instructions for the correct box to check.				
	<input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Personal service corporation <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input type="checkbox"/> Other (specify) ▶ _____		<input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Plan administrator (TIN) _____ <input type="checkbox"/> Trust (TIN of grantor) _____ <input type="checkbox"/> National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government/military <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises Group Exemption Number (GEN) if any ▶ _____		
9b If a corporation, name the state or foreign country (if applicable) where incorporated		State	Foreign country		
10 Reason for applying (check only one box)					
<input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 13.)		<input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Purchased going business <input type="checkbox"/> Created a trust (specify type) ▶ _____			

3. Apply for 501(c)(3) Federal Tax Exempt Status

- must do within 15 months of incorporation by appropriate IRS form (most likely Form 1023, Application for Recognition of Exemption)
- Three key components to exemption eligibility:
 1. “organized”
 2. “exempt purpose”
 3. “operated to further its exempt purposes”
(see IRS Pub. 557 for more info regarding these components)
- Two substantive pieces of information required by the IRS are:
 1. A statement of activities detailing, as specifically as possible, the proposed activities of the new organization
 2. Estimated budgets for three years

3. Apply for Federal Tax Exempt Status – Types of Nonprofit Organizations

Charitable

- Conduct activities which promote:
 - relief of poor, distressed, underprivileged
 - advancement of religion
 - advancement of education and science
 - lessening neighborhood tension
 - defending human and civil rights

Educational

- Schools - primary, secondary, college, trade school
- Orgs that conduct public discussion groups, forums, panels, lectures, etc.
- Orgs that present courses via TV/radio/internet
- Museums, zoos, symphony orchestras, planetariums
- Nonprofit day-care centers
- Youth sports organizations

Places of Worship

- Churches, synagogues, temples, mosques, etc.
- Not required to file for Federal tax exemption, however some do to assure leaders, members and contributors that they are tax exempt and eligible for benefits

3. Apply for Federal Tax Exempt Status – Public Charities and Private Foundations

- Every organization that qualifies for tax-exempt status under section 501(c)(3) of the IRC is further classified as either a public charity or a private foundation
- For some organizations, the primary distinction between a classification as a public charity or a private foundation is the organization's source of financial support
- Generally, a public charity has a broad base of support while a private foundation has very limited sources of support
- This classification is important because different tax rules apply to the operations of each. Deductibility of contributions to a private foundation is more limited than deductibility of contributions to a public charity

3. Apply for Federal Tax Exempt Status

Churches

A church is automatically considered a 501(c)(3) charity. Churches do not have to file yearly 990s.

Criteria the IRS may use when determining if your organization can be classified as a church:

- A recognized creed and form of worship
- A definite and distinct ecclesiastical government
- A formal code of doctrine and discipline
- A distinct religious history
- A membership not associated with any other church or denomination
- Ordained ministers ministering to its congregations
- Established places of worship
- Regular congregations and religious services

Religious Organizations

Do have to apply for 501(c)3 status and file 990s.

- entities whose principal purpose is the study or advancement of religion
- nondenominational ministries
- interdenominational and ecumenical organizations

The determination whether a particular organization is a church must be made on a case-by-case basis, based on all the facts and circumstances.

No one factor determines the answer, and not all factors must be present.

This begs the question:

Should a church that is not required to file Form 1023 or Form 990 nevertheless voluntarily do so?

Advantages of Filing a 1023

Needed to receive a non-profit, bulk-mailing discount from the post office

Necessary for some tax exemptions from state governments

Enables orgs to to set up 403(b) retirement plans

Advantages of Filing a 990

The org is seen to conform to standard nonprofit practices

The discipline of completing the Form and having the board review it are valuable exercises

Some donors—particularly institutional ones—and analysts will only give to organizations that file

4. Apply for State Tax-Exempt Status

- Laws and regulations on starting a nonprofit organization vary from state to state
- Before getting started you should consult information from your state charitable official (often the Attorney General Charities Bureau)

Example: New York State

In order to receive exemption from New York State sales tax, you must apply to the Department of Taxation and Finance for Form ST-119.1

- Statement of activities fully describing all current and proposed activities
- Statement of receipts and expenditures for most recent fiscal year of operation, clearly reflecting the nature and amount of receipts and the purpose and amount of expenditures.
- Statement of assets and liabilities as of the end of your most recent fiscal year
- Organizations seeking property tax exemption must consult the local tax authorities

5. Reporting and Maintaining 501(c)(3) Status – Recordkeeping

- Section 501(c)(3) organizations are required to keep books and records detailing all activities, both financial and nonfinancial
- Legally, you must save all Board documents including minutes and financial statements
- It is necessary to preserve your important corporate documents, including board meeting minutes, bylaws, Articles of Incorporation, financial reports, and other official records
- You should contact your appropriate state agency for more information on what records you are required to keep in the official files

5. Reporting and Maintaining 501(c)(3) Status – Filing Requirements

- Annual Information Returns
 - Form 990, Form 990-EZ, or Form 990-PF along with certain schedules that may be required for your organization

Certain categories of organizations (including churches) are exempted from filing Form 990 or Form 990-EZ

- Annual Electronic Notice
 - Small organizations are not required to file Form 990 if their gross receipts are normally \$25,000 or less
 - These organizations must submit an annual electronic notice using Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ
- Unrelated Business Income Tax
 - An exempt organization must file Form 990-T if it has \$1,000 or more of gross income from an unrelated trade or business during the year

5. Reporting and Maintaining 501(c)(3) Status – Disclosure Requirements

- Public Inspection of Exemption Applications and Returns
 - Section 501(c)(3) organizations must make their application (Form 1023) and annual returns (Form 990 or Form 990-EZ) available to the public for inspection
 - Each return must be made available for a three-year period
- Substantiation and Disclosure of Contributions
 - a donor must obtain a written acknowledgment from a charity for any single contribution of \$250 or more before he/she can claim a charitable contribution on his/her federal income tax return
 - a charitable organization must provide a written disclosure to a donor who makes a payment in excess of \$75 partly as a contribution and partly for goods and services provided by the organization
- A donor cannot claim a tax deduction for any contribution of cash, a check or other monetary gift unless he/she maintains a record of the contribution in the form of either:
 - a bank record (such as a cancelled check)
 - a written communication from the charity (such as a receipt or a letter) showing the name of the charity, date of contribution, and amount of contribution

5. Reporting and Maintaining 501(c)(3) Status – Lobbying Restrictions

- In general, no organization, including a church, may qualify for 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying)
- A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status
- A church or religious organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation
- Churches and religious organizations may, however, conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status

5. Reporting and Maintaining 501(c)(3) Status – Issue Advocacy

- some churches and religious organizations take positions on public policy issues, including issues that divide candidates in an election for public office
- section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention
- Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate
- A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography

Resources

- IRS Publication 557: Tax-Exempt Status for Your Organization
<http://www.irs.gov/pub/irs-pdf/p557.pdf>
- IRS Publication 4220: Applying for IRS 501(c)3 Status
<http://www.irs.gov/pub/irs-pdf/p4220.pdf>
- IRS Form 1023: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code
<http://www.irs.gov/pub/irs-pdf/f1023.pdf>
- IRS Stay Exempt: An IRS Site Created Especially for Nonprofit Organizations <http://www.stayexempt.irs.gov/>
- IRS Form 990: Return of Organization Exempt from Income Tax <http://www.irs.gov/pub/irs-pdf/f990.pdf>
- IRS Publication 1828: Tax Guide for Churches and Religious Organizations
<http://www.irs.gov/pub/irs-pdf/p1828.pdf>

Questions?

A schedule of future trainings will be emailed to all participants

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