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Creating & Operating Your Nonprofit 101

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What Is A Nonprofit?

- To be tax-exempt under section 501(c)(3) of Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes, and none of its earnings may inure to any private shareholder or individual.
- In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.
- Organizations described in 501(c)(3) are commonly referred to as charitable organizations.
- Organizations described in 501(c)(3) are eligible to receive tax-deductible contributions.

Does Organization Have Appropriate Form?

- For IRS to recognize an organization's exemption, the organization must be organized as a trust, a corporation, or an association.

Does Organization Need An EIN?

- Organization must have an EIN before an application for tax exemption can be submitted.
- Use Form SS-4 or https://sa.www4.irs.gov/modiein/individual/index.jsp
- Bank, credit card company, insurance, vendors, suppliers, etc. also will need EIN

Does Organization Have An Exempt Purpose?

- For IRS to recognize organization's exemption, it must have an exempt purpose.
- See Types of Organizations in IRS Publication 557 (https://www.irs.gov/publications/p557) for exempt purposes of various types of tax-exempt organizations.

Example of Exempt Purpose

Corporation is organized exclusively for charitable, educational, scientific, and fostering United States amateur sports competition purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code ("Code"), or the corresponding section of any future federal tax code. Corporation will endeavor to operate and offer programs similar to teaching sports to youth or affiliated with an exempt educational organization; combatting juvenile delinquency or lessening the burdens of government; and fostering United States amateur sports competition as allowed under the Code. Notwithstanding any other provision of its articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code, or the corresponding section of any future federal tax code.

What Is The Organizing Document?

- Organization's organizing document can be Articles of Incorporation, Articles of Association, Trust Agreement, etc.
- To form a nonprofit, Articles of Incorporation must be filed and need:
    1. name (which must include "Corporation", "Company," "Incorporated," "Limited," or an abbreviation thereof);
    2. statement as to whether corporation will be a public benefit, religious or mutual benefit corporation;
    3. name and address of Registered Agent;
    4. name and address of incorporators;
    5. statement as to whether corporation will have members;
    6. statement regarding the distribution of assets upon dissolution
- https://forms.in.gov/Download.aspx?id=4658

Does Organizing Document Limit Purposes?

- In order to be exempt under 501(c)(3), organizing document must have purposes of organization limited to one or more exempt purposes within 501(c)(3), such as charitable, religious, educational, and/or scientific purposes.
- The following is IRS example of an acceptable purpose statement:

  The organization is organized exclusively for charitable, religious, educational, and scientific purposes under 501(c)(3), or corresponding section of any future federal tax code.

Does Organizing Document Contain Dissolution Provision?

- The following is IRS example of an acceptable dissolution clause:

  Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of 501(c)(3), or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

- Also include exempt purpose, conflict of interest policy, and dissolution provision in bylaws,

Do You Have Financial Information?

- The organization must have financial information showing receipts and expenditures for current year and preceding or future years.
- If applying for 501(c)(3) recognition and be eligible to use Form 1023-EZ: annual gross receipts must not exceed $50,000 in any of the past 3 years and/or annual gross receipts will not exceed $50,000 in any of the next 3 years; and total assets not more than $250,000.

Does Organization Have Insurance?

Nonprofit insurance is a type of business insurance that helps protect organizations from risks and claims during operations

- General liability insurance helps cover claims nonprofit caused bodily injury or property damage.
- Commercial property insurance, helps protect owned or rented building, tools, equipment and inventory used to operate nonprofit.
- Business income insurance helps replace lost income if you can't operate your nonprofit due to covered property damage.
- Commercial auto insurance helps protect organization while traveling.
- Data breach insurance helps nonprofit respond to a breach if information gets lost or stolen.
- Event insurance helps protection organization during fundraisers and is usually required by venue.

Determine Classification

- Every organization described in 501(c)(3) has a classification.
- Main classifications are public charity and private foundation.
- Most organizations qualify as public charities.
- A public charity generally has a broad base of support, while a private foundation generally receives its support from a small number of large donors.

Determine Classification

The most common public charity classifications are:

- Section 509(a)(1) - a public charity which receives substantial support in the form of grants and contributions from governmental units, the general public, and other public charities.
- Section 509(a)(2) - a public charity which receives substantial revenues from a combination of contributions, membership fees, and gross receipts from activities that further its exempt purpose.
- If the organization does not qualify as a public charity, then they are a private foundation. A private foundation generally receives its support from a small number of (often large) donors.

How to Apply for 501(c)(3) Status

- To apply for recognition by IRS of exempt status under 501(c)(3), use Form 1023 or Form 1023-EZ.
- Organizations seeking exemption under 501(c)(3) can use Form 1023, but certain small organizations can apply using the shorter Form 1023-EZ.
- You must complete and submit application (i.e. preferably before 12/31 of the year created with IN Secretary of State) along with user fee, through Pay.gov

FAQs

https://www.irs.gov/charities-non-profits/frequently-asked-questions-about-applying-for-tax-exemption

What is difference between nonprofit and tax-exempt status?

- Nonprofit status is a state law concept.
- Although most federal tax-exempt organizations are nonprofit organizations, organizing as a nonprofit organization at the state level does not automatically grant the organization exemption from federal income tax.
- To qualify as exempt from federal income tax, an organization must meet requirements set forth in Internal Revenue Code, apply for tax exemption, receive an IRS determination letter, and file annual tax returns with the IRS.

IN Sales Tax Exemption

- Nonprofits use https://www.in.gov/dor/online-services/intime-tax-center/ to request Form NP-1.
- Nonprofits not registered need to create an INTIME account to create or access IN sales tax exemption certificates.
- IRS determination letter required with IN DOR application to be exempt from paying IN sales tax.
- If nonprofit has sales, nonprofits must collect state gross retail sales tax after $100,000 in sales during a calendar year. This includes sales made by entities operating under organization's registration with IN Department of Revenue.
- See https://www.in.gov/dor/files/sib10.pdf

Purchases by Nonprofit Organizations

To qualify for a sales tax exemption on purchases as a nonprofit organization, the following must be met:

1. Purchaser must be a qualified nonprofit organization (e.g. created with IN Secretary of State, EIN in name of organization, & IRS tax exempt determination letter).
2. Organization must not be operated predominantly for social purposes.
3. Article purchased must be used to carry on the nonprofit's purpose. This means article must be used for same purpose as that for which the organization is being exempted, or article must be purchased to raise money to carry on nonprofit's purpose.
4. Transaction must be invoiced directly to nonprofit organization and paid directly via organization's funds. Purchases for private benefit of any member of the organization, such as meals and lodgings, are not eligible for exemption

Annual Responsibilities

https://www.irs.gov/charities-non-profits/form-990-resources-and-tools

- An organization with $50,000 or more in gross receipts must annually file Form 990 or Form 990-EZ
- Small organizations with less than $50,000 may file annual electronic notice - e-Postcard.

https://www.in.gov/dor/tax-forms/nonprofit-tax-forms/

- IN law requires nonprofits to file Form NP-20 (Nonprofit Organization’s Annual Report).
- Include a copy of federal return with IN DOR return
- Business Entity Reports must be filed annually with IN Secretary of State using https://inbiz.in.gov/BOS/Home/Index

Charity Gaming

- Organization must qualify to be eligible to conduct any charity gaming events https://forms.in.gov/download.aspx?id=5135

Application must include copy of IRS determination letter, bylaws, and articles of incorporation

- License issued for a period of twelve (12) months https://forms.in.gov/download.aspx?id=14197
- A one-time activity license https://www.in.gov/igc/charity-gaming/charity-gaming-forms/
- Financials information after event https://www.in.gov/igc/charity-gaming/charity-gaming-forms/
- Charity Gaming Basics https://www.in.gov/igc/files/Charity-Gaming-Online-Training-Dates.pdf
- Training Seminars https://www.in.gov/igc/files/Charity-Gaming-Online-Training-Dates.pdf

Trademark Registration

- How you choose to protect your name, slogans, and logos is up to you.
- Not required to register trademark, but where or whether you decide to register trademark can determine scope of rights.
- Specifically, you can rely on common law rights or file for state or federal trademark registration.

Common Law Rights: Okay

- If you haven’t filed for state or federal registration, trademark protection is based solely on using trademark in commerce within a particular geographic area.
- Limited rights, as you can only enforce trademark rights for the specific area where trademark is used.

State Registration: Better

- Registering trademark with IN Secretary of State creates rights in IN only.
- Trademark is not protected across state lines where your trademark is not registered.
- If you decide to protect product/service across state lines, you'll need to decide if you want to register trademark in that state or with USPTO.

Federal Registration: Best

- Registering trademark with USPTO creates rights throughout US and territories, and includes registration in USPTO database of registered trademarks.
- You can use ® symbol and rely on those rights to protect trademark across state lines.
- However, USPTO is not an enforcement agency, so you will be responsible for pursuing any infringing users.

Why Register Your Trademark?

- Trademark is listed in USPTO database of registered and pending trademarks.
- This provides public notice to anyone searching for similar trademarks.
- They will see trademark, goods and services on registration, date applied for trademark registration, and date trademark registered.
- Legal presumption you own trademark and have right to use it. (e.g. registration certificate proves ownership, eliminating need for amounts of evidence.)
- Right to bring a lawsuit concerning trademark in federal court.
- May use federal trademark registration symbol, ®, with trademark to show you are registered. (e.g. may help deter others from using your trademark or one similar.)

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