

# Organizing a Non-Profit Organization

## 501 C-(3)

August 2015

### WHY

The primary purpose of organizing a 501 C-(3) Tax Exempt organization is to allow your donors to make contributions to your organization which they can deduct on their annual tax returns. It will enhance your fund raising profile and allow you to issue receipts which can be used by the donor for the purpose of his income tax deductions.

Many large corporations, banks and other Non-profits will not make contribution unless you are a 501 C-(3) organization.

### WHO CAN BE A NON-PROFIT

Organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster nation or international amateur sports competition, or for the prevention of cruelty to children or animals are eligible to obtain recognition for exemption. The key word is "charitable", i.e. for the good of the community.

### AUTOMATICALLY EXEMPT ORGANIZATIONS

Some organizations do not have to file with the IRS to be exempt. These organizations include churches, synagogues, temples and mosques. Integrated auxiliaries of churches and conventions or associations of churches. Any organization that has gross receipts in each taxable year of normally not more than \$5,000.00.

Even those these organizations are exempt, they may wish to file for the 501 C-(3) exemption to demonstrate to donors that the contributions will be deductible.

### ORGANIZATION STRUCTURE

Generally, only Trust, unincorporated associations under state laws and corporations may apply to be tax exempt. A Limited Liability Company (LLC) may apply for exemption if the members of the LLC are themselves tax exempt already. This article deals only with the most common form which is a corporation.

A corporation is formed under state law by the filing of articles of incorporation with the Secretary of State. The articles must contain specific language to comply with both the state and federal regulations concerning non-profit corporations.

Once established by the state, the corporation must elect directors who are responsible for the general governance of the corporation and who elect the officers who actually operate the non-profit. In many cases the directors and officers are the same people.

Once officers are elected, the corporation must adopt By-laws which comply with the IRS regulations. The By-laws must provide for several absolute requirements including:

1. Refrain from participating in political campaigns for local, state or federal offices.

2. Ensure that the assets and earnings do not unjustly enrich board members, officers, managers, employees or other insiders.
3. Not benefit non-exempt purposes.
4. Not operate a trade or business that is not related to its exempt purpose.
5. Not engage in illegal activities or violate fundamental public policy.
6. Not influence legislation.

Once the corporation is organized it must obtain an Employer Identification Number (EIN) from the IRS.

### 501 C (3) APPLICATION

Once the corporation is organized you must file the 1023 Application or recognition as a 501 C (3) organization with the IRS. This is a very lengthy form which takes time to properly prepare but if you have time and patience it can be done without the assistance of an attorney. However, it can also become a tedious and aggravating process due to the extensive disclosure requirements.

Once the application is completed you must file it with the IRS and pay the application fee. The fee is based upon the annual receipts of your organization. If you are a new organization it is based on anticipated revenue. If your organizations expects to receive less than \$10,000 annually, the fee is \$400.00; if the receipts are anticipated to be greater than \$10,000 the fee is \$850.00.

### STATE EXEMPTIONS

In addition to the IRS, you must also file an exemption application with the state tax revenue office. In California that is the Board of Equalization. Typically this is done once the determination letter is received from the IRS. Ordinarily this exemption is granted if you have received the IRS determination.

### REGISTRY OF CHARITIES

In California you must also file with the State Attorney General. The non-profit must make disclosures that assure the Attorney General of the legitimacy of the organization. This is the only real supervision of non-profit organizations and is very important to the integrity of the system.

### NON-PROFIT OPERATIONS

Now that you are fully operational and organized you are ready to carry out your charitable purpose.

To make sure that you are successful you should attempt to maintain a large and diverse board of directors who are actively engaged with your program. I highly recommend setting up regular monthly or quarterly board of director meetings, regularly engaging with the community about your program. Your officers must be effective communicators of your program and held accountable for their actions and conduct. The board of directors has the ultimate responsibility for the actions of the officers and employees of the corporation.

### INSURANCE

Liability insurance for your non-profit is very important, depending upon the type of activity in which you are engaged. D&O Insurance (Directors & Officers) protects them from any personal liability for the actions of the organizations. There are statutory protections provided to non-profits but vary from state to state.

## KEEPING YOUR ORGANIZATION ACTIVE

The most common failing of non-profit organizations is the failure to file annual tax returns; reports to the attorney general registry or keeping the corporation itself current with the secretary of state.

## ANNUAL REPORTS

There are four (4) reports that you must make annually to keep your organization current. If you fail to report your tax exempt status may be suspended or lost. All of the reports must be done on-line.

All California not-for-profit corporation must make the following annual reports. Each non-profit which engages in any for profit venture or sale must also report those profits in a separate form.

1. BOE Organizations that received less than \$50,000 need only report on an e-postcard to the California Board of Equalization. You will need the corporation number, EIN number, correct name of the organization and annual income. Due 5 months after end of fiscal year.

[https://www.ftb.ca.gov/online/199N\\_ePostcard/index.asp](https://www.ftb.ca.gov/online/199N_ePostcard/index.asp)

2. IRS Organizations that received less than \$50,000 need only report on an e-postcard to the IRS. You will need the corporation number, EIN number, correct name of the organization and annual income. Due 5 months after the end of the fiscal year. <http://epostcard.form990.org/>

3. CA ATTORNEY GENERAL California Not for Profits must also file biannually with the California Attorney General Charities Division. Must be filed within 4 months and 15 days after the end of the accounting period. <http://oag.ca.gov/charities/forms>

4. CA SECRETARY OF STATE California Not for Profits must also file annually with the California Secretary of State by filing a Statement of Officers. <https://businessfilings.sos.ca.gov/> The first report must be filed with 4 months of the beginning of the corporation.