

Creating a Non-Profit Organization in the State of Indiana Organizational Structure: Filling Out The Forms

Key Points:

- Incorporating as a non-profit does not automatically result in 501c3 status or state sales and income tax exemption. These must be applied for separately.
- To successfully obtain 501c3 status, an organization must be able to show a defined charitable purpose, and a structure that ensures that the organization benefits the public, not the employees or owners of the organization.
- There is no special structure for faith-based organizations. They are subject to the same incorporation and reporting requirements as any other non-profit. The only significant difference is that churches and other houses of worship are not required to file a 990 federal tax return.

During the formation of the Non-Profit Organization, there are three separate agencies that will be involved; The Indiana Secretary of State, The Indiana Department of Revenue, and the Internal Revenue Service. The requirements of all three agencies must be met to ensure compliance. Each agency also has specific reporting requirements which will be covered at the end of the chapter.

Indiana Secretary of State

Articles of Incorporation are filed with the Secretary of State. These are the birth certificate for the organization, and set the basic ground rules. According to Indiana Code 23-17-3-2, the Articles of Incorporation must include:

- the name of the corporation (which must include "Corporation", "Company," "Incorporated," "Limited," or an abbreviation thereof);
- a statement as to whether the corporation will be a public benefit, religious or mutual benefit corporation;
- the name and address of the Registered Agent;
- the name and address of all the incorporators;
- a statement as to whether the corporation will have members;
- a statement regarding the distribution of assets upon dissolution ([IC 23-17-22-5](#));

The filing fee is \$30.00

Secretary of State's Office, Corporations Division
302 W. Washington Street, Room E-018
Indianapolis, IN 46204
Information Line: 317-232-6576
www.IN.gov/sos/business/corporations.html

Indiana Department of Revenue

The Department of Revenue is responsible for issuing the organization an Indiana Taxpayer Identification Number, and issuing authorization for sales tax exemption.

Both of these are accomplished by filing Form NP-20A. There is no charge for filing.

Department of Revenue
100 N Senate Ave.
Indianapolis, IN 46204
Nonprofit Organizations 317-232-2188
www.dor.in.gov

Internal Revenue Service

Non-profit status is a state law concept. Non-profit status may make an organization eligible for certain benefits, such as state sales, property, and income tax exemptions. Although most federal tax-exempt organizations are non-profit organizations, *organizing as a non-profit organization at the state level does not automatically grant the organization exemption from federal income tax.* To qualify as tax-exempt from federal income taxes, an organization must meet requirements set forth in the Internal Revenue Code. (From www.irs.gov/charities , italics ours)

The IRS is responsible for issuing an Employer Identification Number (EIN) and determining if an organization meets the criteria to be a 501c3 tax exempt organization.

To obtain an EIN, complete Form SS-4 and submit it to the IRS. The organization will need an EIN even if it has no employees. The EIN is roughly the corporate equivalent of a Social Security number, and is used by the IRS for identification purposes. There is no charge for obtaining an EIN.

Obtaining recognition as a 501c3 organization is much more involved. The application is lengthy, and approval is not automatic. The IRS carefully reviews all applications to ensure that the organization is a bona fide charity. The process can easily take several months before a provisional determination is made. Churches * are not required to apply for 501c3 status. Qualified donations to a church are generally deductible by the donor for federal income tax purposes.

Application is made by filing Form 1023. Effective July 1, 2006 the application fee is \$750.00. For organizations which anticipate annual gross income of less than \$10,000 for the next four years, the fee is reduced to \$300.00.

If the organization is found by the IRS to be "an organization such as that described in Section 501c3 of the Revenue Code", they will issue a Determination Letter.

TIP: Don't be deceived by appearances! The Determination Letter is printed on cheap, low quality paper with a simple printer, and there is nothing grandiose or impressive about the format. Despite this, keep the letter safe! Virtually every grant will require that a copy of the Determination Letter be included with the application.

Office of Faith-Based and Community Initiatives
302 W Washington, E012
Indianapolis, IN 46204
www.ofbci.in.gov
March 16, 2006

The Internal Revenue Service can be reached by phone at 1-800-829-4933. The IRS website has excellent resources for non-profit organizations on their website at www.irs.gov/charities .

DUNS Number

The Data Universal Numbering System or DUNS is operated by Dun and Bradstreet, a commercial company providing business information.

All Federal grants and contracts require that a potential vendor obtain a DUNS number. Many private foundations also use the DUNS number for identification purposes.

A DUNS number can be obtained at no charge by calling 866-705-5711 or visiting <https://eupdate.dnb.com/requestoptions/government/ccrreg/>

Annual Reporting Requirements

Indiana Secretary of State

Indiana Non-Profit corporations must file an annual business entity report. This report contains information about the Board of Directors, registered agent, and contact information for the organization. There is a \$10 fee for filing by mail, or \$6 for filing online.

An organization must be current in its filing requirements to be eligible for a state or federal grant. Continued failure to file will result in the organization being administratively dissolved- in essence, the organization ceases to legally exist.

TIP: This will be one of the first things a grants administrator checks. Being behind in simple filing requirements creates serious doubts about the capacity and professionalism of the organization.

Indiana Department of Revenue

Indiana Non-profit corporations must file Form NP-20 with the Department of Revenue. This form is due each year at the same time as the Federal Form 990. Failure to file the NP-20 causes an organization to lose their state sales tax exemption.

Internal Revenue Service

Any 501c3 corporation (other than a church) with income over \$25,000 must file Form 990 or 990EZ on an annual basis. This form is due on the 15th day of the fifth month after the end of the tax year- for most organizations this will be May 15th. There is no fee for filing.

Form 990 is a public document. By law, an organization must provide a copy upon request. 990s are also available for viewing or download at www.guidestar.org at no charge.

TIP: Many potential funders or donors use an organization's 990 for initial research. Some of the information that can be gleaned from a 990:

- Income from donations, government contracts, fees for services, and membership dues.
- Expenses for programs, management and fundraising.
- Assets and liabilities.
- Members of the Board of Directors and their compensation.
- Any employees or contractors receiving over \$50,000 per year.
- Investments.
- Grants paid or pledged.

A clean, well organized 990 makes a great first impression!

Other Issues

Non-Profit corporations have the same obligations to their employees as any other employer. Reporting of wages and withholding of income and social security taxes is a continued responsibility.

While 501c3 organizations are generally exempt from income tax, their employees are not. Employees of faith and community based organizations have to pay taxes, just like everybody else.

Disclaimer-

This list may not be complete. In particular, organizations that have unrelated business income will have additional reporting requirements and potential tax liability.

It is each organizations responsibility to ensure that all necessary registrations, reports and filings are completed.

* The term church is not meant to apply to any particular religion- we have simply followed IRS practice in using church as a common and well understood term. Mosques, temples, synagogues, congregations and meeting houses have the same rights and responsibilities.

The IRS does not have a blanket definition of a church. The following from IRS Publication 1023 describes how the IRS determines if an organization can be considered a church:

Certain characteristics are generally attributed to churches. These attributes of a church have been developed by the IRS and by court decisions. They include: distinct legal existence; recognized creed and form of worship; definite and distinct ecclesiastical government; formal code of doctrine and discipline; distinct religious history; membership not associated with any other church or denomination; organization of ordained ministers; ordained ministers selected after completing prescribed courses of study; literature of its own; established places of worship; regular congregations; regular religious services; Sunday schools for the religious instruction of the young; schools for the preparation of its ministers. The IRS generally uses a combination of these characteristics, together with other facts and circumstances, to determine whether an organization is considered a church for federal tax purposes. The IRS makes no attempt to evaluate the content of whatever doctrine a particular organization claims is religious, provided the particular beliefs of the organization are truly and sincerely held by those professing them and the practices and rites associated with the organization's belief or creed are not illegal or contrary to clearly defined public policy.