

The New Normal: Applying for Tax-Exempt Status with Form 1023-EZ

Seattle, Washington
June 15, 2015

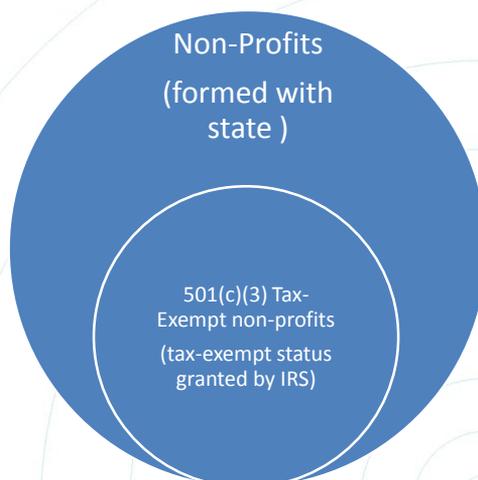


Initial questions.

- Does proposed purpose qualify for 501(c)(3) status?
- Do you have an initial board of directors, majority independent?
- Do you have an initial budget?
- What are the sources of financial support?
- Do you and your members have the time, skill, and financial support to operate the organization?
- Is there a need for the services provided? Is another non-profit already doing the same thing?



Non-Profit vs. Tax-Exempt



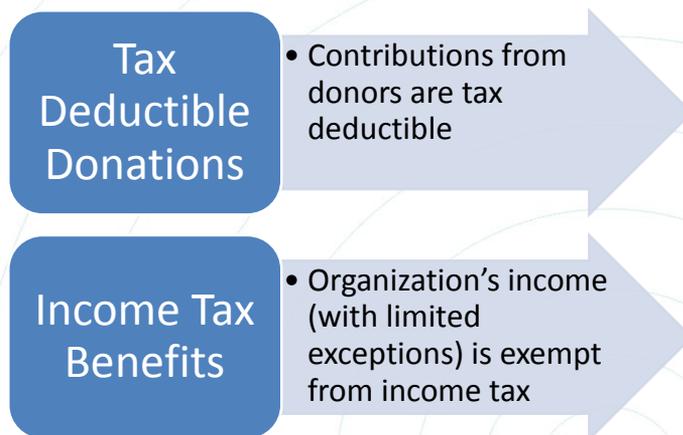
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Are Non-Profit and Tax-Exempt the Same?

- Tax-Exempt
 - “Tax-exempt” usually means exempt from *federal* income tax
 - Most common type is 501(c)(3) charity.
 - Other types of tax-exempt organizations include:
 - 501(c)(4): “social welfare organizations”
 - 501(c)(5): unions and agricultural organizations
 - 501(c)(6): trade associations
 - 501(c)(7): social clubs
 - 501(c)(8) and (10): fraternal organizations

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Why Become a 501(c)(3) Tax-Exempt Organization?



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Obtaining 501(c)(3) Tax-Exempt Status

- Some organizations are automatically exempt (e.g., churches)
- Most organizations must file application for tax-exempt status with IRS
- Two different applications depending on type and operations of organization:
 - Form 1023
 - Form 1023-EZ

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Form 1023

- 12-page core questionnaire
- 14 pages of supplemental schedules
- Submission of detailed information regarding activities of organization and all organizational documents
- 2-page checklist
- \$400 or \$850 filing fee
- Form submitted by mail to IRS
- Response time by IRS typically 4-15 months



Creation of Form 1023-EZ

- Applications began taking much longer in 2012
 - Reinstatements, increased volume
 - IRS budgets have been continually reduced
- IRS response in July 2014: Form 1023-EZ
- Reduced scrutiny at beginning with more resources devoted towards audit and examination of organizations after tax-exempt status granted



Form 1023-EZ

- 3-page core questionnaire
- 7-page worksheet (part of instructions)
- Only limited information submitted regarding activities of organization
- \$400 filing fee
- Form submitted online
- Response time by IRS typically 2-3 weeks



Who Can File 1023-EZ?

Smaller Organizations

- **Annual gross receipts:** \$50,000 or less for 3 years
- **Total assets:** \$250,000 or less
- Organizations that cannot file: formed as LLC, has foreign address, is a successor to a for-profit entity, hospitals, universities, and credit counseling services



Initial Steps For All Organizations

- Form organization with state by filing Articles of Incorporation
- Obtain Tax Identification Number (Form SS-4)
- Elect directors, officers, and adopt bylaws and organizational policies
- Form articles, bylaws, and conflict of interest policy found on www.Wayfindlegal.org
- Apply for tax-exempt status
 - Apply within 27 months of formation



Completing Form 1023-EZ

- Gather organizational documents and board information
- Instructions and Questionnaire:
 - <http://www.irs.gov/pub/irs-pdf/i1023-EZ.pdf>
 - If you answer “yes” to any question, you cannot file Form 1023-EZ and must file Form 1023
 - You do not submit with application
 - Refer to Instructions
- Form 1023-EZ
 - Completed online at pay.gov
 - Refer to Form



Completing Form 1023-EZ, cont.

Form 1023-EZ, Part I highlights

- Top of page 1, Attestation of Eligibility
- Line 2, Employer Identification Number:
 - Obtained by completing Form SS-4 after organization has been formed with state
- Line 8, Names, titles, and addresses of officers and directors
 - If more than 5 directors and officers, use priority list in instructions
 - Can use organization's address for board members
 - What if directors are related?



Completing Form 1023-EZ, cont.

Form 1023-EZ, Part II highlights

- Lines 5-7, attestation regarding purpose, limitations, and dissolution
 - Purpose: see sample Articles of Incorporation (Article 3.1)
 - Limitations: see sample Articles of Incorporation (Article 3.2.1 and Article 3.2.3)
 - Dissolution: see sample Articles of Incorporation (Article 3.2.2)



501(c)(3) tax-exempt status

Organizational test

- Articles of Incorporation must contain:
 - Purposes clause limiting purposes of the corporation to 501(c)(3) purposes only
 - Dissolution clause providing assets will be distributed on dissolution only for exempt purposes (or to a government)
- Articles of Incorporation cannot contain:
 - Provisions expressly empowering organization to engage in non-exempt activity (e.g., political activity, distributing assets to private individuals or for-profit businesses)



Completing Form 1023-EZ, cont.

Charitable Activities

- relief of the poor and distressed or of the underprivileged;
- advancement of religion;
- advancement of education or science;
- erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and
- promotion of social welfare to:
 - lessen neighborhood tensions;
 - eliminate prejudice and discrimination;
 - defend human and civil rights secured by law;
 - combat community deterioration and juvenile delinquency.



Completing Form 1023-EZ, cont.

IRS resources regarding qualification for 501(c)(3) status:

- irs.gov/Charities-&-Non-Profits/Charitable-Organizations/
- IRS Publication 557 (“the basics”)
- IRS Publication 1828 (for churches and religious orgs.)
- IRS Publication 4220 (application process)
- IRS Publication 1771 (charitable contributions)
- IRS Publication 598 (unrelated business)



Completing Form 1023-EZ, cont.

Form 1023-EZ, Part III highlights

- Line 1, NTEE code
 - See pages 18-20 of instructions
- Line 3, attestation regarding prohibited activities
- Lines 4 through 11, other activities
 - Not necessarily disqualifying, but may raise IRS questions



Completing Form 1023-EZ, cont.

Operational test

- This is about the activities of the non-profit
- “Operated exclusively” for exempt purpose
- “Exclusively” = “No substantial part” of activities may be for a non-exempt purpose
- Absolute prohibition on two things:
 - political campaign activity
 - “private inurement”



Completing Form 1023-EZ, cont.

- What is “private inurement?”
- Any use of charity’s assets or income for the benefit of an insider
- “Insider” has no precise definition but likely includes:
 - Officers and directors
 - Major contributors
 - Key employees
 - Family of the above
- Examples
 - Loans to directors, use of charitable property by officers for own benefit, building of charitable property on property owned by director



Completing Form 1023-EZ, cont.

Form 1023-EZ, Part V highlights

- Line 1, 509(a)(1) vs. 509(a)(2)
 - 509(a)(1) organizations are supported by donations to the organization by the general public
 - 509(a)(2) organizations are supported by combination of gifts, grants, contributions, membership fees and gross receipts
- Complete hypothetical Schedule A to 990 or 990-EZ to determine more favorable classification based upon projected sources of funds



Completing Form 1023-EZ, cont.

Form 1023-EZ, Part VI highlights

- Signed by officer, director, or trustee – not the lawyer
- Form submitted online by payment with credit or debit card
- If no IRS questions, organization should hear from IRS in 2-4 weeks after submission



After Submission of Application

- Filing Tax Returns
 - Form 990, 990-EZ, 990N
 - Must file regardless of activities of organization
 - Failure to file for 3 years = revocation of tax-exempt status
- Staying up to date with the state
 - Annual filings



Filing Form 1023

- If organization does not qualify to submit Form 1023-EZ, it must file Form 1023
- Form 1023 requires much more preparation and submission of substantial information regarding activities of organization
- Follow directions carefully and include all required information
- Consider consulting attorney

