

# THE CITIZEN ADVOCACY CENTER'S GUIDE TO ESTABLISHING AN ILLINOIS NON-PROFIT CORPORATION

(created 07/2007)

A non-profit corporation is an organization created for educational, charitable, religious, literary or scientific purposes. A non-profit corporation is not created for the purpose of making a profit and must be a corporation or trust run by a board of directors. The corporation may not be owned by an individual and must generate enough revenue to support its operation and must spend that revenue on the organization's charitable purpose.

## TYPES OF IRS TAX-EXEMPT STATUS

There are two types of tax-exempt status that non-profit corporations can receive from the IRS. For both, no part of the corporation's net earnings can benefit a private shareholder or individual. Also, both are exempt from federal and state income tax.

### IRS 501(C)(3) TAX-EXEMPT STATUS

- Corporations with 501(c)(3) tax-exempt status are exempt from federal and state taxes and eligible for state sales tax exemption.
- Donations made to 501(c)(3) organizations are tax deductible.
- Only organizations operated for a religious, charitable, scientific, testing of public safety, literary, or educational purpose, or for the prevention of cruelty to children or animals are eligible.
- A 501(c)(3) organization is limited in its ability to lobby for a particular candidate or referendum. If a "substantial amount" of funds are spent on lobbying, a 501(c)(3) organization can lose its tax exempt status. Activity intended to influence specific legislation is considered "lobbying" rather than general issue advocacy.
- What constitutes a "substantial amount" varies depending on the size of the organization. The IRS has considered about 20% of the corporation's total expenditures to be "substantial."

### IRS 501(C)(4) TAX-EXEMPT STATUS

- Corporations with 501(c)(4) tax-exempt status are exempt from state and federal income tax. However, 501(c)(4) organizations are **not** exempt from state sales tax.
- Only non-profit organizations operated exclusively for the promotion of social welfare, or local associations of employees where the net earnings are devoted exclusively to charitable, educational, or recreational purposes are eligible.
- Donations made to 501(c)(4) organizations are **not** tax deductible
- 501(c)(4) organizations have no restrictions on the amount they can spend on lobbying and therefore have more freedom to attempt to influence legislation.



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## STEPS FOR ESTABLISHING AN ILLINOIS NON-PROFIT CORPORATION

- 1. Apply to the IRS to receive a Federal Employer Identification Number to become a legal entity recognized by the IRS using IRS form SS-4.**  
**([http://sa.www4.irs.gov/sa\\_bign/newFormSS4.do](http://sa.www4.irs.gov/sa_bign/newFormSS4.do))**
  - a. Write by-laws to govern the operation of your non-profit corporation
  - b. Consult the Illinois General Not for Profit Corporation Act of 1986 (805 ILCS 105) to ensure that all state requirements for bylaws are satisfied
  - c. Create a Board of Directors
  
- 2. Incorporate with the State of Illinois through the Secretary of State's office:**  
**<http://www.sos.state.il.us>**
  - a. Complete and submit 2 copies (one original) of the Articles of Incorporation (form NP-102.10  
[http://www.cyberdriveillinois.com/publications/pdf\\_publications/nfp1020.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/nfp1020.pdf)). Answer all questions and include the \$50 filing fee by certified check, cashiers check or money order, payable to the Secretary of State. The Articles of Incorporation must include:
    - o The name of the corporation, which must be different from existing corporations.
    - o The registered office of the organization (not a P.O. box) in the state and the name of a registered agent to whom service of process can be made in the event that a suit is filed against the corporation.
    - o The duration of time that you plan to be incorporated.
    - o A statement of purpose of the function or character for which the corporation is formed.
    - o There must be at least 3 directors and directors do not need to be Illinois citizens.
  
- 3. Within 15 days of the receipt of the Articles of Incorporation and Certification of Incorporation from the Secretary of State, both papers must be filed with the Recorder of Deeds in the county where the registered office of the organization is located.**
  
- 4. Apply for federal income tax exemption with either IRS FORM 1023 for 501(c)(3) organizations or IRS FORM 1024 for 501(c)(4) organizations. (New organizations must notify the Secretary of State that they are applying for recognition as a 501(c) organization.)**
  - a. If federal income tax exemption is received, state income tax exemption is achieved automatically.

**5. Attempt to become exempt from Illinois sales and use taxes by drafting a letter requesting exemption must be submitted along with the organization's Articles of Incorporation, by-laws, and the IRS exemption letter to the State of Illinois Department of Revenue. (<http://tax.illinois.gov/NonProfits/>)**

**6. Register with the Illinois Attorney General, Division of Charitable Trusts and Solicitations using forms CO-1 and CO-2 (<http://www.ag.state.il.us/charities/co-1form.pdf>), (<http://www.ag.state.il.us/charities/co-2form.pdf>)**

- a. Organizations that intend to solicit and hold funds in amounts of less than \$4,000 do not need to register under the Charitable Trust Act and the solicitation for Charity Act.
- b. Pay the \$15 registration fee.
- c. After registration, the Illinois Attorney General will assign the corporation a charitable organization (CO) number that the corporation should use in filing annual reports with the Attorney General.

**7. File an annual report with the Illinois Secretary of State, which is due each year on the first day of the month the corporation was founded.**

**8. Check additional IRS reporting requirements which can be found in the IRS Compliance Guide for 501(c) Tax-Exempt Organizations at <http://www.irs.gov/pub/irs-pdf/p4221.pdf>**

**9. Check additional Illinois Secretary of State reporting requirements if the corporate name, duration or purpose has changed, or if the corporation merges, dissolves or is reinstated. Forms can be found on the Secretary of State's Website. ([http://www.cyberdriveillinois.com/departments/business\\_services/publications\\_and\\_forms/nfp.html](http://www.cyberdriveillinois.com/departments/business_services/publications_and_forms/nfp.html))**

### **COMBINING A FOR-PROFIT AND NON-PROFIT BUSINESS**

- Special care must be taken when operating a non-profit corporation that is associated with a for-profit business. In order for any non-profit corporation to acquire and maintain non-profit status, all profits from the corporation must be routed back into the non-profit corporation and cannot be used to benefit any private interest or shareholder. Careful documentation must be maintained to show that revenue from the non-profit goes back into the non-profit corporation and not the for-profit business or its private interests. If a "substantial" portion of non-profit proceeds are filtered into activities that are not tax-exempt, IRS 501(c)(3) status can be lost.
- A tax-exempt corporation may operate at a profit, as long as that profit is invested back into the organization and used for the exempt purpose of the organization.
- An organization with tax-exempt status is still liable for paying taxes on its unrelated business income that doesn't relate to its charitable purpose. An exempt organization that has \$1,000 or more of gross income from an unrelated business must file IRS Form 990-T in addition to the other required annual filings and tax returns.

## RESOURCES

Illinois Secretary of State's non-profit organizing guide:  
[http://www.cyberdriveillinois.com/publications/pdf\\_publications/c16525.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/c16525.pdf)

Illinois Legal Aid Instructions on non-profit organizing:  
[http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp\\_content&contentID=4133](http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=4133)

Illinois Department of Revenue: <http://www.revenue.state.il.us/NonProfits/>

Illinois Attorney General: <http://www.ag.state.il.us/charities/index.html>

Internal Revenue Service: <http://www.irs.gov/charities/index.html>

IRS's Compliance Guide for 501(c) Tax-Exempt organizations: <http://www.irs.gov/pub/irs-pdf/p4221.pdf>

## FORMS

- IRS form SS-4: <http://www.irs.gov/pub/irs-pdf/fss4.pdf>

- Illinois Articles of Incorporation form NP-102.10:  
[http://www.cyberdriveillinois.com/publications/pdf\\_publications/nfp10210.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/nfp10210.pdf)  
[http://www.cyberdriveillinois.com/publications/pdf\\_publications/nfp10410.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/nfp10410.pdf)

- IRS FORM 1023: <http://www.irs.gov/pub/irs-pdf/f1023.pdf>  
instructions: <http://www.irs.gov/pub/irs-pdf/i1023.pdf>

- IRS FORM 1024: <http://www.irs.gov/pub/irs-pdf/f1024.pdf>  
instructions: <http://www.irs.gov/pub/irs-pdf/i1024.pdf>

Illinois Attorney General forms CO-1 and CO-2: <http://www.ag.state.il.us/charities/co-1form.pdf>  
<http://www.ag.state.il.us/charities/co-2form.pdf>

No Part of this brochure should be considered legal advice. Applicants for non-profit status should consult an attorney.

The Citizen Advocacy Center, a nonpartisan, 501(c)(3), non-profit organization is dedicated to building democracy for the 21<sup>st</sup> Century by strengthening the public's capacities, resources and institutions for better self-governance. If you are interested in more information about the Center, becoming a volunteer, or making a tax deductible contribution to the Center, please feel free to contact us at:

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