

Hurwit & Associates Nonprofit Formation Process

A. Incorporation

1. Initial consultation with client to discuss the following:
 - Tax-exempt activities, requirements for qualification under Internal Revenue Code
 - Expected fundraising sources, budget projections (discuss Public Charity vs. Private Foundation status, implications for organization, potential donors)
 - Short-form 1023-EZ vs. long-form 1023
 - Governance topics including:
 - method of succession for board members (self-perpetuating vs. membership model)
 - special control provisions (e.g. permanent founding directors, special appointment powers)
 - board size, officer positions, *ex officio* positions
 - international / foreign representation & control considerations
 - Proposed name of organization and any associated trademark issues
 - Corporate vs. trust form, as appropriate
 - Legal nexus, recommendation for state of domicile
 - Fiscal year
2. Draft bylaws (including legal purpose statement), explanatory memo based upon initial consultation.
3. Review draft bylaws with client, edit bylaws as necessary until approved by board of directors.
4. Obtain data for incorporation or trust
 - Final name
 - Fiscal year
 - Names, addresses of initial board members
 - Officer names
 - Address
5. Prepare draft incorporation/trust document tailored to meet state requirements.
6. Review draft incorporation/trust document with client, edit as necessary, file incorporation papers upon approval of board of directors. Certified copy of certificate of incorporation is ordered at this time.

B. Tax Exemption

1. Prepare Power of Attorney to communicate with IRS on client's behalf (Form 2848); Obtain client signature.
2. Obtain EIN (Employer Identification Number) once corporation/trust formed.
3. Client opens bank account with EIN, certified copy of incorporation papers. Provide counsel, as necessary, regarding bank account, EIN.

4. Consultation with client regarding IRS Form 1023/1024:
 - Projected budgets – discuss general categories of income expense, balanced budget, general guidelines for compensation, informational nature of budget numbers
 - Narrative Statement of Activities – discuss IRS requirements, recommended approach, ties to budgetary numbers
5. Draft initial Form 1023/1024 and necessary attachments.
6. Review initial draft Form 1023/1024 with client, discuss specific portions of application including:
 - Business, personal relationships between directors, officers
 - Compensation arrangements, discretionary bonuses/non-fixed payments
 - Conflicts of Interest including any leases, loans or other agreements with officers/directors
 - Fundraising methods and jurisdictions
 - Grantmaking activities
 - Foreign activities
 - Political activities
 - Joint ventures
 - Intellectual property concerns
 - Real property donations and donations of other tangible goods
 - Close connections with other organizations
 - Required schedules (if any, most typically Schedule H for scholarship programs)
7. Finalize IRS Form 1023/1024, prepare for signature by organization representative.
8. Conduct final internal review of application to ensure accuracy.
9. Copy and File IRS Form 1023/1024 (full copy to client).
10. Respond to IRS examiner (as needed) for final approval of 501(c) status.

C. Further State Filings and Discussion

1. Obtain state income tax, sales tax exemptions as needed.
2. Complete charitable registration with Attorney General's office.
3. Discussion of post-exemption matters including:
 - a. Insurance and liability concerns (policies, statutory protections)
 - b. Review of private foundation vs. public charity status; public support
 - c. Corporate record keeping
 - d. Board resolutions
 - e. Initial and annual state and federal filings (charitable solicitation, employment, foreign corporate registration)
 - f. Leases, loans, affiliation, grant award agreements and other transactional matters
 - g. Organizational policies: expense reimbursement, whistleblower, document retention, executive compensation, and conflict of interest
 - h. Contractor, employment issues
 - i. Personnel policies, board manuals