

FORMING A TAX-EXEMPT CALIFORNIA NONPROFIT CORPORATION

Prepared by:

**The Legal Aid Foundation of Los Angeles
Housing and Communities Workgroup**



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DISCLAIMER

This manual has been prepared by the Legal Aid Foundation of Los Angeles. It is not intended to provide you with specific legal advice regarding your organization, but rather to give you general information about the incorporation and tax-exempt status application process. If you have specific questions about your organization, you should consult an attorney.

ABOUT US

Legal Aid Foundation of Los Angeles' Housing and Communities Workgroup aims to empower Los Angeles communities and community-based organizations in their efforts to attack poverty at its roots. The Unit is committed to building clean, safe, and economically vibrant neighborhoods through legal assistance, policy advocacy and community education. To achieve this goal, attorneys and advocates assist in developing, training, and empowering community-based organizations and poor and low-income individuals to become actively involved in the community revitalization process.

To request our services for your organization, call us at (800) 399-4529 or visit us online at www.lafla.org.

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CHAPTER ONE: INTRODUCTION

This manual has been designed by the Housing and Communities Workgroup of the Legal Aid Foundation of Los Angeles to provide your organization with basic guidance on forming a nonprofit corporation and gaining tax-exempt status. This manual is not designed to take the place of legal or technical assistance, but rather to lay out the basic steps to get the incorporation and tax exemption process underway.

Although this manual is useful to any organization seeking to incorporate, the emphasis is on organizations that want to incorporate as Public Benefit Corporations and who want to seek 501(c)(3) Tax Exempt Status.

This manual is divided into three separate sections:

1. The incorporation process
2. Gaining tax-exempt status
3. Continuing reporting requirements

Review each section carefully. It will be important for your organization to appreciate the differences between incorporation and tax-exempt status, as well as to be aware of reporting requirements.

There are two decisions your organization must initially make. First, do you want to become a nonprofit corporation? The incorporation process is defined by the California Corporations Code. Therefore, all the forms and processes discussed in this chapter will be governed by California law.

Next, does your organization wish to seek tax-exempt status? As you may be aware, tax-exempt status provides many advantages for an organization. Some of these advantages include no state or federal income tax liabilities, assisting your organization with qualifying for certain grants and/or funding and, in some instances, providing your donors with a charitable contribution tax deduction. Tax-exempt status is governed by both state and federal regulations. Under state law, the Franchise Tax Board establishes filing and reporting requirements; under federal law, the Internal Revenue Service (IRS) establishes such requirements.

Not all organizations may choose to undertake these processes. In fact, as will be briefly discussed later in this manual, certain types of organizations may not find it appropriate or necessary to incorporate or to seek tax-exempt status. However, should your organization choose to form into a tax-exempt nonprofit corporation, this manual will prove to be a valuable tool in that endeavor.

Each chapter of this manual contains a checklist outlining each step of the process. In addition, the Appendix contains an overall checklist that can be used as a guide to the incorporation and tax exemption processes.

CHAPTER TWO: FORMING A NONPROFIT CORPORATION

A. SECTION A: GENERAL BACKGROUND

1. Nonprofit vs. For-Profit Organization

A nonprofit organization is defined by the American Bar Association as a corporation “no part of the income or profit of which is distributed to its members, directors or officers”. All nonprofit organizations have three basic characteristics:

- They are designed from the outset to be nonprofit
- None of the income or assets may be divided among members, officers, or directors
- They may only pursue legally defined purposes (i.e., public benefit, educational, charitable or religious)

A for-profit corporation, on the other hand, would allow for income and asset distribution and serve very different purposes.

2. Types of Nonprofit Organizations

Under the California Corporations Code, there are four basic types of legal organizations that can be used for nonprofit purposes: the unincorporated association, the charitable trust, the corporation, and the limited liability company.

a. Unincorporated Association

An unincorporated association is formed for some purpose other than for profit and is generally the organizational structure selected by small local clubs, labor unions and fraternal organizations. Often the association structure is selected if the organization will only operate for a short time period.

Advantages

Easy to organize
Informal
No incorporation costs
May enter into contracts
May sue or be sued
Limited record keeping requirements

Disadvantages

Somewhat vague state regulations
Potential individual director and member liability for acts and omissions within the scope of their authority
Difficulty in contracting/doing business in association's name
Difficulty in raising money/obtaining grants
Net income potentially taxable

b. Charitable Trust

Trusts are generally developed by one person (the trustor), who gives an intermediary person (the trustee) legal title to certain property (the trust) for the benefit of another (the beneficiary).

This organizational structure is used for very specific and very limited purposes, for example, tax-advantaged charitable giving.

Advantages

Can be established and operated relatively quickly and inexpensively

Does not have to comply with any statutorily required formalities

Founder has the authority to name the trustee

Disadvantages

Must register with the Attorney General and is subject to the Attorney General's continuing supervision

c. Corporation

The corporation is the most common—and probably the best—organizational structure for most nonprofit organizations. It is a legal entity, organized according to prescribed legal requirements and having specific powers granted by law.

Advantages

Recognized legal entity

Clear statutory requirements

No individual director or officer liability for good faith acts and omissions that are within the scope of their duties and in the best interest of the corporation and within the exercise of their policy-making judgment (California Corporations Code section 5047.5)

Prerequisite from some funding sources to receiving money

Disadvantages

Costs of formation

Need to fulfill corporate formalities

Formalized structure, reporting and record keeping requirements

d. Limited Liability Company

Limited Liability Companies, often referred to as LLCs, are a hybrid between corporations and partnerships. Although they offer the limited liability of corporations, they have greater flexibility and can be structured so that the entity is not subject to corporate income tax.

Advantages

Members, managers and officers are not personally liable for obligations or liabilities of the LLC, with the same narrow exceptions (e.g. using LLC as "alter ego") as corporate shareholders (California Corporations Code section 17101)

Flexible structure allowing members to actively participate in management and control of company

Can be structured so that the entity is not subject to corporate income tax but has pass-through tax status similar to a partnership

Disadvantages

Costs of formation

Must pay \$800 annual California limited liability tax

Law is unclear as to whether LLCs can be formed for charitable purposes, State law requires a "lawful business activity, whether or not for profit" (California Corporations Code section 17002)

Very limited circumstances under which LLCs can obtain 501(c)(3) tax exemption

e. Fiscal Sponsorship

Another alternative to forming a corporation or gaining independent 501(c)(3) status may be operating as an informal organization under the legal umbrella of an existing charity.

Advantages

Can raise grants, contributions, and other funds based on the sponsor's track record and experience

The sponsor has fiscal, accounting, personnel, management and other systems in place

Can operate informally, no incorporation costs

The sponsor assumes the risk of liability

Disadvantages

Loss of control over activities, since ultimate authority lies with the board of directors of the sponsor

Community perception that its activities are those of the sponsor. The sponsor may receive credit for a successful project. A sponsor with a bad reputation may tarnish the project

As a small part of a larger organization, the project may not receive timely and adequate support. Also, the sponsor might retain a significant portion of the funds for its administrative expenses.

May be difficult to disengage from the sponsor and continue the project as a separate corporation.

3. Nonprofit Corporate Forms Under California Law

The California Corporations Code recognizes three types of nonprofit corporations. Each type is governed by separate sections of the California Nonprofit Corporation Law. The three types are Public Benefit, Mutual Benefit and Religious Benefit Corporations. The differences are as follows:

Public Benefit Corporation	Mutual Benefit Corporation	Religious Benefit Corporation
Formed for public or charitable purposes	Formed for any lawful purpose	Formed primarily for religious purposes
No distribution of assets to members allowed at any time	Distribution of assets to members allowed only upon dissolution	No distribution of assets to members allowed at any time
Subject to strict governmental regulation and supervision	Subject to less rigid governmental regulation and supervision	Subject to minimal governmental control and supervision
Generally used by foundations, civic, and social service groups	Generally used by homeowners associations, fraternal orders, and trade associations	Generally used by churches and other religious organizations

The vast majority of California nonprofits are organized as Public Benefit Corporations.

B. SECTION B: FORMATION AND INCORPORATION PROCESS

Checklist

Reserve a corporate name with the California Secretary of State (optional but recommended).

Draft and file Articles of Incorporation with the California Secretary of State.

Draft corporate bylaws.

Complete SI-100, Statement of Information (Domestic Nonprofit Corporation) and file it with the California Secretary of State.

Complete Initial Registration with State Attorney General's Registry of Charitable Trusts using Form CT-1 or URS v.4.02 within 30 days of receipt of property or assets by corporation.

If your organization will have employees, complete Form DE-1NP, Registration Form for Nonprofit Employers, and file it with the California Employment Development Department.

1. Reserving a Name with the Secretary of State

It is advisable to reserve the name of your organization with the Secretary of State's office prior to filing your Articles of Incorporation. This process will help avoid later delays in approval of the Articles should another corporation already have that name. If you have a prepaid priority account, you may reserve the name by phone. All requests for prepaid priority accounts, name availability and name reservations must be sent in writing.

Prepare the Name Reservation Request Form

- <http://www.sos.ca.gov/business-programs/>
- Forms, Samples & Fees > Business Entities > Corporations
- Scroll down to find Name Reservation Request Form
- <http://bpd.cdn.sos.ca.gov/corp/pdf/name-reservation-request-form.pdf>
- A name will only be held for 60 days



Submit it to the Secretary of State

- Fee: \$10
- By mail:
 - Secretary of State, Name Availability Unit, 1500 11th Street, 3rd Floor, Sacramento, CA 95814
 - Include a self-addressed envelope
- In person:
 - At the above address or at 300 South Spring Street, Room 12513, Los Angeles, CA 90013
 - In person requests require an additional \$10 handling fee

2. Preparing the Articles of Incorporation

Every nonprofit organization that wishes to incorporate must file Articles of Incorporation with the Secretary of State. Articles of Incorporation need not be lengthy or include detailed information about your organization. Under California law, certain items must be covered in Articles of Incorporation.

Specific instructions and forms links:

Public Benefit: <http://bpd.cdn.sos.ca.gov/corp/pdf/articles/arts-pb.pdf>

Mutual Benefit: <http://bpd.cdn.sos.ca.gov/corp/pdf/articles/arts-mu.pdf>

Religious Benefit: <http://bpd.cdn.sos.ca.gov/corp/pdf/articles/arts-re.pdf>

a. Required Provisions

1. Name, street and, if different, mailing address of the Corporation.
2. The following statement:

"This corporation is a nonprofit public benefit/mutual benefit/religious benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public/Mutual/Religious Benefit Corporation Law for charitable [501(c)(3)] or public [501(c)(4)] purposes."

3. The name and California street address of the corporation's initial agent for service of process.
4. A statement describing the specific purpose of the corporation.
5. If the corporation wishes to be federal and state tax-exempt as a 501(c)(3) organization, specific statements must be included which:
 - a. Dedicate its assets to a 501(c)(3) organization upon dissolution;
 - b. Prohibit the corporation from engaging in political campaigns and restrict lobbying activity; and
 - c. Specify being "organized and operated exclusively" for 501(c)(3) purposes.

b. Other Provisions

In addition to the required provisions, certain other provisions will not be effective unless they are stated in the Articles of Incorporation:

1. A provision limiting the duration of a corporation's existence to a specific date.
2. If the corporation is formed under the authority of a parent organization, a provision must be included which gives authority for dissolution to the parent organization and provides for the assets to go to the parent organization upon dissolution.

c. Optional Provisions

These provisions are not formally required, but may be included if your organization so chooses:

1. The names and addresses of the initial directors (a drawback to including this information is that each initial director must sign as an incorporator).
2. A statement that the corporation shall or shall not have members.
3. The number, or a required minimum and maximum number, of directors.

3. Executing the Articles of Incorporation

Each incorporator must sign the Articles of Incorporation. The incorporator(s) can be the director(s), an attorney, or someone in the attorney's office, like a paralegal.

4. Filing the Articles of Incorporation

Submit the Articles of Incorporation and enclose a check for \$35.00 payable to the Secretary of State to cover the \$30 filing fee and \$5 certification fee:

By Mail: Secretary of State
Business Entities Filing Unit
P.O. Box 944260
Sacramento, CA 94244-2600

A certified copy will be returned in approximately 7-8 weeks. If you want an additional certified copy, enclose a check for \$41 or \$41.50 to cover the \$30 filing, \$10 certification fee for 2 certified copies, and the copying fee of \$1 if the Articles are on one page or \$1.50 if on two pages.

In Person: Secretary of State Office
1500 11th Street, 3rd Floor
Sacramento, CA 95814

If filing in person, take a separate check for \$15.00 for special handling fees, payable to the Secretary of State.

******IMPORTANT NOTE******

Once the Secretary of State has endorsed and filed Articles of Incorporation, a corporation continues to exist until dissolved. Dissolving a public benefit or religious corporation requires at minimum:

1. A California Attorney General letter that waives objections to distribution of its corporate assets or confirms that no corporate assets exist; and
2. Filing a Certificate of Dissolution with the Secretary of State.

Dissolution of a mutual benefit corporation requires the California Attorney General to approve—or a superior court to decree—the distribution of its charitable assets. Therefore, you should not file Articles of Incorporation unless you will seek tax-exemption and actively pursue your stated purposes. If the corporation is inactive and/or suspended, it will need a revivor certificate from the Franchise Tax Board before it can dissolve.

5. Drafting Corporate Bylaws

It is highly recommended that your organization draft corporate bylaws and have them approved by the board of directors and/or membership. In fact, your organization must have bylaws in order to file for tax-exempt status. Bylaws function as the operating instructions for conducting the business of the corporation. Bylaws serve three main purposes:

1. Regulate the internal practices and procedures of the organization;
2. Define the relationship, duties and limitations of the members, if any; and
3. Define the power, duties and limitations of directors, officers, and other agents.

Bylaws also serve a practical necessity by helping to resolve future disagreements among board members regarding organizational operations.

Recommended Bylaws Provisions

The California Corporations Code Sections 5151 and 5152 describe the general requirements for bylaw provisions. At a minimum, bylaws should include the following:

1. Location of principal office;
2. Time, place & manner of calling membership, director, & other committee meetings;
3. The number, qualifications, duties, and powers of directors;
4. Quorum requirements at all mentioned meetings;
5. Appointment and authority of committees;
6. Appointment; duties, and compensation of officers;
7. The voting authority of the Executive Director (if applicable);
8. Hiring, termination, duties, and how compensation will be determined for staff;
9. Method of determining members (if applicable);
10. Reporting requirements, annual reports, financial reports;
11. Dues (if applicable);
12. Fiscal Year;
13. Amendment and conflict of interest procedures;
14. Other items that may be specific to your organization's needs.

6. Initial Registration with the Secretary of State

Within 90 days after filing Articles of Incorporation, all nonprofit corporations must file a Statement of Information (Domestic Nonprofit Corporation) with the California Secretary of State. Details for completing the form are explained on the reverse side of the form.

Prepare the SI-100 Statement of Information

- <http://www.sos.ca.gov/business-programs/>
- Forms, Samples & Fees > Business Entities > Corporations
- Scroll down to find Statement of Information - Nonprofit (Form SI-100)
- http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf

Submit it to the Secretary of State

- Fee: \$20
- Copy fees: \$1 for the first page, \$0.50 for each attachment page
- For certified copies, an additional \$5 per document
- Online:
 - <https://businessfilings.sos.ca.gov>
- By mail:
 - Secretary of State, Statement of Information Unit
 - P.O. Box 944230
 - Sacramento, CA 94244-2300
- In person:
 - 1500 11th Street
 - Sacramento, CA 95814

7. Initial Registration with the California Attorney General

Initial registration with the California Attorney General's Registry of Charitable Trusts is required within 30 days after receiving assets. To register, an organization must submit Form CT-1. If it intends to solicit funds in other states, the Unified Registration Statement (URS v.4.02), which most states requiring registration accept, may be used. A copy of the organization's Articles of Incorporation and Bylaws, and a registration fee of \$25, must also be included. The initial registration fee applies to all charities registering with the Attorney General's Registry of Charitable Trusts for the first time regardless of gross revenue or assets.

Prepare the CT-1 Form

- <http://www.oag.ca.gov/charities/forms>
- Scroll down to find CT-1 Initial Registration Form
- <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/charities/charitable/ct1-form.pdf>
- URS v.4.02:
 - www.multistatefiling.org/urs_webv402.pdf

Submit it to the Attorney General

- Fee: \$25
- Check payable to Department of Justice
- By mail:
 - Registry of Charitable Trusts
 - P.O. Box 903447
 - Sacramento, CA 94203-4470

8. Initial Registration with the Employment Development Department

If your organization plans to hire employees, you will need to register with the California Employment Development Department.

Prepare the DE-1NP

- <http://www.edd.ca.gov/forms>
- Click on Payroll Taxes - Forms and Publications
- Scroll down to find DE-1NP

- www.edd.ca.gov/pdf_pub_ctr/de1np.pdf

Submit it to the Secretary of State

- No fee

- By mail:
 - Employment Development Department
 - Account Services Group MIC 28
 - P.O. Box 826880
 - Sacramento, CA 94280-0001

Generally, a charity that has employees is treated like any other business for the purpose of employment law. The following guides provide more information about the employment relationship and duties of an employer:

- California Employment Development Department 2018 California Employer's Guide
http://www.edd.ca.gov/pdf_pub_ctr/de44.pdf
- IRS Publication 15, Employer's Tax Guide (Circular E)
<https://www.irs.gov/pub/irs-pdf/p15.pdf>
- National Council of Nonprofit Associations Sample Employee Handbook
<https://www.501commons.org/resources/tools-and-best-practices/human-resources/sample-employee-handbook-national-council-of-nonprofits>

CHAPTER THREE: GAINING TAX-EXEMPT STATUS

C. SECTION A: TYPES OF EXEMPT ORGANIZATIONS

A nonprofit organization is not automatically exempt from state or federal taxes. To be recognized as tax-exempt, an organization must satisfy certain requirements and file for exemption with each taxing authority. The first step in the process is determining what type of tax-exempt status suits your organization's missions and goals.

1. Internal Revenue Code Section 501(c)(3)

501(c)(3) exempt status is the most common form selected. Organizations qualifying for 501(c)(3) status do not pay income tax and donations received are generally tax deductible by the donor, which makes soliciting donations somewhat easier. To qualify under 501(c)(3), the corporation's stated purpose must be one or more of the following: *religious, charitable, scientific, educational, or preventing cruelty to children or animals.*

The term charitable includes relieving the poor, distressed or underprivileged; lessening government burdens or neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

The corporation must be organized and operated exclusively for one or more of these exempt purposes. In addition, the corporation's Articles of Incorporation must clearly state all of the following:

- The corporation is organized and operated exclusively for one of the 501(c)(3) exempt purposes.
- All assets will be dedicated to the exempt purpose and that upon dissolution assets will be distributed to a similar organization.
- None of the assets will be used for the benefit of any private individual.
- The corporation will not, as a substantial part of its activities, attempt to influence legislation. In addition, the corporation will not participate in any political campaign for or against any candidate for public office.

To be considered for tax-exempt status under section 501(c)(3), complete and file IRS Form 1023 within 27 months of incorporation.

501(c)(3) Lobbying – Restricted but not Prohibited

Under section 501 (c) (3), an organization is limited in its attempts to influence legislation. The IRS has given most public nonprofit charitable organizations the choice of two different standards to measure and control their lobbying expenditures.

Substantial Part Test

This test states that “no substantial part” of a public charity’s activities can be spent attempting to influence legislation. The lack of clarity regarding the definition of “substantial” in this test can cause problems. Although some courts have held this to mean that no more than 5% of the charity’s budget can be spent on lobbying activities, the IRS’s position is that the absolute amount spent as well as the impact and public prominence of the charity are all relevant factors. If a 501 (c) (3) does not file an election to be governed by the “expenditure test”, the “substantial part test” will apply to its lobbying activities.

Expenditure Test

Organizations who intend to lobby within allowable limits can gain some clarity and protection by electing to be governed by a financial test. This test caps the amount of lobbying a 501 (c) (3) organization can do to certain percentages of the organization’s exempt purpose expenditures. Exempt purpose expenditures include all costs relating to the charity’s nonprofit goals (i.e., most expenditures other than for fundraising, capital expenditures, or generating unrelated business income). The limits are:

<u>If exempt purpose expenditures are:</u>	<u>Lobbying nontaxable amount is:</u>
\$500,000 or less	20% of the exempt purpose expenditures
Over \$500,00 but not over \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures
Over \$17,000,000	\$1,000,000

Grassroots lobbying expenditures (encouraging the public to contact legislators about legislation) are limited to 25% of the total lobbying ceiling. Under the expenditure test, the penalty for exceeding the yearly cap is a 25% tax on the excess. An organization’s tax exemption will only be revoked if it spends beyond an average of 150% of its allowable amount over a four-year period.

To elect to be governed by the Expenditure Test, an organization must file IRS Form 5768, Election/Revocation of Election by an Eligible Section 501 (c) (3) Organization To Make Expenditures to Influence Legislation and check the box marked “Election.” Once an organization elects to come under the provisions of the new law, the election will be effective for the current tax year and continue until the organization revokes its election.

2. Internal Revenue Code Section 501(c)(4)

Another fairly common tax-exempt status is 501(c)(4). Organizations formed for “social welfare” purposes qualify under this code section. Common 501(c)(4) organizations include civic leagues, employee associations and action organizations. As under 501(c)(3), organizations under 501(c)(4) must be organized and operated exclusively for social welfare purposes. In addition, the corporation's Articles of Incorporation must clearly state all of the following:

- All assets will be dedicated to the exempt purpose and that upon dissolution its assets will be distributed to a nonprofit fund, foundation or corporation organized under 501(c)(4).
- None of the assets will be used for the benefit of any private individual.

501(c)(4) organizations must notify the IRS within 60 days of formation by filing IRS Form 8976, Notice of Intent to Operate Under Section 501(c)(4). An application is not required for recognition of exemption, but such recognition may be requested by filing Form 1024-A within 27 months of incorporation.

3. Differences Between 501(c)(3) and 501(c)(4) Status

Three major differences exist between 501(c)(3) and 501(c)(4) status:

- 1) 501(c)(4) organizations may do an unlimited amount of legislative lobbying.
- 2) 501(c)(4)s may participate in limited lawful political campaign activities on behalf of or in opposition to candidates for public office as long as they are primarily engaged in activities that promote social welfare. However, 501(c)(4) organizations will be taxed on any expenditures for political campaign activities.
- 3) Contributions made to 501(c)(4) organizations are not tax deductible charitable donations for donors.

4. Other Organizations Exempt Under 501(c)

There are 27 other categories of organizations that may gain tax-exempt status under other provisions of section 501(c). Common examples include business leagues, social clubs, fraternal societies, and veterans' organizations.

D. SECTION B: PROCEDURE FOR SECURING TAX-EXEMPT STATUS

Checklist

_____ Complete and file IRS Form SS-4, Application for Employer Identification Number.

_____ File IRS Form 1023, Application for Recognition of Exemption, or IRS Form 8976, Notice of Intent to Operate Under Section 501(c)(4) and optionally IRS Form 1024-A, Application for Recognition of Exemption (use IRS instructions for the forms).

_____ If filing IRS Form 1024-A, also file IRS Form 8718, User Fee for Exempt Organization Determination Letter Request.

_____ If appropriate, file IRS Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation.

_____ File IRS Form 2848, Power of Attorney, or Form 8821, Tax Information Authorization (optional).

_____ File California FTB Form 3500 (unless you submitted it during the incorporation process) or 3500A if filing after you get your IRS determination of 501(c)(3) status.

_____ If appropriate, file Form CDTFA-277 with the California Department of Tax and Fee Administration and then Form BOE-267 with the Los Angeles County Tax Assessor for property tax exemption.

1. Federal Forms

All necessary federal forms described below may be obtained through the IRS website: <http://www.irs.gov> OR you may order the forms from the IRS by calling: 1-800-829-3676.

Also recommended is **IRS Publication 557**, "Tax-Exempt Status for Your Organization"

2. Submitting IRS Form SS-4, Application for Employer Identification Number

IRS Form SS-4 must be filed prior to filing IRS Form 1023 or 1024-A. IRS Form SS-4 is an Application for Employer Identification Number (EIN). All organizations filing annual returns with the IRS need an EIN even if they have no employees. An EIN functions as your organization's Social Security Number. You can apply for an EIN online, by telephone, by fax, or by mail depending on how soon you need to use the EIN.

Obtain IRS Form SS-4

- www.irs.gov/businesses
- Employer ID Numbers > Apply for an EIN Online
- www.irs.gov/pub/irs-pdf/fss4.pdf

Submit it to the IRS

- No Fee
- Online:
 - www.irs.gov/businesses
 - Click on Employer ID Numbers
- By mail:
 - Internal Revenue Service Center
Attn: EIN Operation
Cincinnati, OH 45999
- By phone:
 - (800) 829-4933
- By fax:
 - (859) 669-5760

3. Obtaining Federal Tax Exemption

If your organization is filing under section 501(c)(3), your IRS Form 1023, Application for Recognition of Exemption, must be filed within 27 months of incorporation. Organizations exempt under 501(c)(4) must notify the IRS within 60 days of formation by filing Form 8976, but an Application for Recognition of Exemption (Form 1024-A) is optional. Failure to timely file Form 8976 will result in a penalty of \$20 for each day it is late. The instructions accompanying all forms should be carefully followed. An Application for Recognition of Exemption is necessary to obtain a determination letter confirming your tax-exempt status. Processing with the IRS generally takes eight to sixteen months, depending on your charitable purpose(s). Incorrectly completing the forms will cause unnecessary delay. If filed within 27 months of incorporation, exemption will be retroactive to the date of incorporation.

The IRS also requires each organization that submits IRS Form 1023 or 1024-A to submit a financial statement. If your organization is receiving funding, it should already keep accurate and up-to-date financial records. Preparing the financial statement will simply require summarizing this information and organizing it into the time periods required by the IRS. If your organization is not keeping financial records or if preparing a financial statement sounds too technical to handle, consult with a Certified Public Accountant (CPA) or someone who has experience with budgets and financial statements for nonprofit organizations.

******IMPORTANT NOTE******

This is the best time to get your organization off to a good start on fiscal responsibility. Accurate financial record keeping will save your organization from unnecessary problems with the IRS at a later date.

Some smaller organizations seeking tax-exempt status under section 501(c)(3) may be eligible to file IRS Form 1023-EZ, Streamlined Application for Recognition of Exemption. Only organizations that meet a list of 30 criteria are eligible to file the streamlined application, which requires no narrative responses. Form 1023-EZ can only be filed online at <http://irs.gov/form1023-ez> and has a reduced fee of \$275.

Expediting the 501(c)(3) Process

The IRS will only expedite a request for 501(c)(3) status for a compelling reason. The most common are if the purpose of the organization is to provide disaster relief for a recent emergency, or if an organization has a grant pending or has been promised a valuable asset that the organization can only receive if it obtains its determination letter by a predetermined date. If this is the case for your organization, submit a cover letter requesting the IRS to expedite your application for tax-exempt status and make sure to include:

- The name of the person or organization committed to giving the grant/asset;
- The amount of the grant or the value of the asset;
- The date the grant/asset will be forfeited or permanently redirected to another organization;
- The impact on the organization's operations if it does not receive the grant/asset; and
- The signature of a principal officer or Power of Attorney.

It may also be helpful for the funder or donor to send a similar letter to the IRS on your behalf. Remember, if you file Form 1023 within 27 months of incorporation, your tax-exempt status will be retroactive to the date of incorporation. Therefore, expedited service is not appropriate, and will not be granted, just to ensure you have tax-exempt status before the end of a fiscal year.

501(c)(3)

Obtain and complete IRS Form 1023

- www.irs.gov/pub/irs-pdf/f1023.pdf

Attach the following documents

- Financial statements for the relevant time period:
 - If your organization has existed for more than one (1) year, but less than five (5) years, provide a detailed breakdown of support, revenue and expenses for each year it has existed and proposed budgets for a total of four (4) years, including the current year
 - If your organization has existed for less than one (1) year, provide financial data for current year and proposed budgets for next two (2) years for a total of three (3) tax years
- The balance sheet for the current year (ending within 60 days of the date of the application).
- A certified copy of your Articles of Incorporation
- A copy of your board-approved Bylaws, if they exist
- A Conflict of Interest policy

Sign the application

- Include a daytime phone number where the IRS can reach someone in case of questions

Include the appropriate user fee

- \$600
- Checks should be payable to the United States Treasury

Complete IRS Form 5768 (optional)

- Include if you elect for lobbying activity to be measured by the expenditure test (see page 12)
- www.irs.gov/pub/irs-pdf/f5768.pdf

Complete IRS Form 2848 or 8821 (optional)

- Form 2848 allows an attorney or accountant to represent your organization when dealing with the IRS
- Form 8821 allows an individual to receive confidential tax information, but not represent your organization
- www.irs.gov/pub/irs-pdf/f2848.pdf
- www.irs.gov/pub/irs-pdf/f8211.pdf

Submit by mail

- Internal Revenue Service
Attention: EO Determination Letters
Stop 31
P.O. Box 12192
Covington, KY 41042-0192
- Note: This address may be different than what is on the forms, but use it anyway!

501(c)(4)

Obtain and Complete Form 8976

- <https://services.irs.gov/registration/>
- Fee: \$50
- Must be filed online

Obtain and Complete Form 1024-A (optional)

- The application process is similar to Form 1023. See above and consult the IRS Instructions for Form 1024-A
- <https://www.irs.gov/pub/irs-pdf/f1024a.pdf>

Obtain and Complete Form 8718 (optional) to pay the user fee

- Only necessary if filing Form 1024-A
- \$600
- Checks should be payable to the United States Treasury

- As of February 2018, this form has not been updated to reflect the current user fee. Follow the instructions to complete the form, but include \$600 instead of the user fee listed on the form.

4. Obtaining State Tax Exemption

All California nonprofit organizations seeking exemption from California corporation franchise or income tax must file either Form FTB 3500 or Form FTB 3500A with the California Franchise Tax Board.

Organizations that have federal tax exemption under Internal Revenue Code Section 501(c)(3) can simplify the process of obtaining state tax exemption by submitting Form 3500A (which is only 2 pages long) along with a copy of the determination letter from the IRS verifying the organization's federal tax-exempt status.

Form 3500 is the traditional procedure, which involves a lengthy application similar to the IRS Form 1023 and requires payment of a \$25 application fee. Your organization should consider filing the Form 3500 if:

- The organization does not expect to receive federal tax-exempt status soon and needs state tax exemption as soon as possible; or
- The organization has received federal tax exemption under Section 501(c)(3) but the effective date of the exemption – as stated in the IRS determination letter – is later than the date on which the organization incorporated.

Processing times vary for each form, so you should consult with the Franchise Tax Board if you wish to expedite your request.

Form 3500A

Obtain FTB Form 3500A

- www.ftb.ca.gov/forms
- Search for "2500A"

- www.ftb.ca.gov/forms/misc/3500a.pdf

Submit it to the FTB

- No fee

- By mail:
 - Exempt Organizations Unit MS F120
 - Franchise Tax Board
 - P.O. Box 1286
 - Rancho Cordova, CA 95741-1286
- Include a copy of your IRS 501(c)(3) determination letter.

Form 3500

Obtain and complete FTB Form 3500

- www.ftb.ca.gov/forms/misc/3500.pdf
- Note: Submit the most recent version of the form available on the website. An older version may not be accepted.

Attach the following documents

- A certified copy of your Articles of Incorporation
- A copy of your board-approved Bylaws, if they exist

Sign the application

- Include a daytime phone number where the IRS can reach someone in case of a question

Include the appropriate user fee

- \$25
- Check should be payable to Franchise Tax Board

Submit by mail

- Exempt Organizations Unit, MS F120
- Franchise Tax Board
- P.O. Box 1286
- Rancho Cordova, CA 95741-1286

5. Filing for Local Property Tax Exemption

Property owned and used exclusively by a nonprofit, religious, charitable, scientific, or hospital corporation to further their exempt purposes may be eligible for a property tax exemption known as the welfare exemption (California Revenue and Taxation Code Section 214).

Nonprofit charitable organizations that seek an exemption must first receive an Organizational Clearance Certificate from the California Department of Taxes and Fees Administration. In determining whether to issue a certificate, CDTFA staff will consider, among other things, whether the services and expenses of the nonprofit organization (including salaries) are excessive (based upon like services and salaries in comparable public or private institutions) and whether the nonprofit organization materially enhances the private gain of any individual.

After obtaining an Organizational Clearance Certificate, your organization may then apply to the local County Assessor for exemption. If you have not received your Organizational Clearance Certificate from the CDTFA before the County filing deadline (February 15), submit your claim for exemption to the County Assessor anyway to preserve your filing as timely.

Prepare your Claim

- Complete Form CDTFA-277
 - www.cdtfa.ca.gov/formspubs/forms.htm
 - Search for "277"
 - www.cdtfa.ca.gov/formspubs/cdtfa277.pdf
- Attach
 - A certified copy of your Articles of Incorporation
 - A copy of your IRS determination letter
 - Certified financial statements
 - Documentation supporting and describing your exempt activities

Submit it to the CDTFA

- By mail:
 - California Department of Tax and Fee Administration
Welfare Exemption Section
P.O. Box 942879
Sacramento, CA 94279-0064

Receive your Organizational Clearance Certificate

Make an initial filing with the County Assessor

- Note: Each county has its own forms; you must file in the county where the property is located
- Complete Form BOE-267
 - For Los Angeles:
 - assessor.lacounty.gov/forms-2
 - Click on Exemptions (Non-Profit) > Claim for Welfare Exemption (First Filing)
 - <https://assessor.lacounty.gov/wp-content/uploads/2016/12/BOE-267-EXM-417-EXM-419-12-6-16-PS-ws.pdf>
- Include a copy of the Organizational Clearance Certificate and Finding Sheet from the CDTFA
- Submit by mail:
 - County of Los Angeles
Office of the Assessor
500 West Temple Street, Room 227
Los Angeles, CA 90012-2770

6. Sales and Use Tax

Generally, a charity that sells goods is required to collect and remit sales tax to the state of California. A seller's permit may be required as well. While there is no blanket sales tax exemption for California charities, there are specific exceptions to this rule in limited circumstances. The California Department of Tax and Fee Administration is the state agency that oversees sales and use taxes. Their guide for nonprofit organizations can be found at <https://www.cdtfa.ca.gov/industry/nonprofit-organizations.htm>.

CHAPTER FOUR: CONTINUED REPORTING REQUIREMENTS

Checklist

Biennially (every other year) file SI-100, Statement of Information (Domestic Nonprofit Corporation) with the California Secretary of State.

Annually file the appropriate FTB Form 199 with the Franchise Tax Board.

Annually file the appropriate IRS Form 990 with the Internal Revenue Service.

Annually file form RRF-1, Registration Renewal Fee, a copy of the appropriate IRS Form 990, and Form CT-694 (if applicable) with the California Attorney General's Registry of Charitable Trusts.

If you have over \$25,000 in gross revenues and receipts in a fiscal year, prepare and distribute an Annual Report to all directors and any members.

File any changes to the Articles of Incorporation with the California Secretary of State.

******IMPORTANT NOTE******

The information provided here serves only as an introduction to the continuing requirements with which nonprofits and tax-exempt organizations must comply to remain in good standing.

1. Biennial Report with the Secretary of State

All nonprofit corporations must file a biennial (every other year) report with the Secretary of State. The report provides updated information on corporate officers, location, and agent for service of process. This reporting requirement is fulfilled by utilizing the same SI-100 Statement of Information (Domestic Nonprofit Corporation) described in Section B.6 of Chapter 2. The Secretary of State's office sends the form to the last address your organization filed with the State. Even if your organization does not receive the form in the mail, it is still responsible for timely filing. Failure to file the report on time will result in a penalty. The deadline to file is the last day of the anniversary month of incorporation. For example, if you originally incorporated on March 1, 2018, your biennial report will be due by March 31 of each even-numbered year.

Prepare the SI-100 Statement of Information

- <http://www.sos.ca.gov/business-programs/>
- Forms, Samples & Fees > Business Entities > Corporations
- Scroll down to find Statement of Information - Nonprofit (Form SI-100)
- http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf

Submit it to the Secretary of State

- Fee: \$20
- Online:
 - <https://businessfilings.sos.ca.gov>
- By mail:
 - Secretary of State, Statement of Information Unit
 - P.O. Box 944230
 - Sacramento, CA 94244-2300
- In person:
 - 1500 11th Street
 - Sacramento, CA 95814

2. Annual Informational Return with the Internal Revenue Service

Most federally tax-exempt organizations, except certain religious, educational, governmental and political organizations, must annually file an information return (Form 990, 990-EZ, or 990-PF) or electronic notice (IRS 990-N). Exempt organizations with gross receipts of \$200,000 or more or total assets of \$500,000 or more must file IRS Form 990. Exempt organizations with gross receipts of over \$50,000 but under \$200,000 and total assets under \$500,000 may file IRS Form 990 or 990-EZ. (Exempt organizations that are private foundations must file Form 990-PF.) Exempt organizations with gross receipts normally under \$50,000 must file an annual electronic notice, IRS Form 990-N (e-Postcard), containing basic contact and financial information.

The appropriate 990 form is due 5 months and 15 days after the end of the organization's fiscal year. Penalty fees are assessed for late filings and sometimes if filing was timely but incomplete. Failure to file the appropriate 990 form over a three-year period will lead to automatic revocation of federal tax exemption.

Obtain the correct form

- <https://www.irs.gov/charities-non-profits/current-form-990-series-forms-and-instructions>
- Attach
 - A certified copy of your Articles of Incorporation
 - A copy of your IRS determination letter
 - Certified financial statements
 - Documentation supporting and describing your exempt activities
 - Any required Schedules

Submit it to the IRS

- By mail:
 - Department of the Treasury
 - Internal Revenue Service Center
 - Ogden, UT 84201-0027
- Online (Form 990-N only)
 - <https://sa.www4.irs.gov/epostcard/>

****IMPORTANT NOTE****

IRS penalties can be severe and very difficult to resolve if incorrectly assessed! If your organization's treasurer is unfamiliar with these forms, he or she should consult a CPA or attorney for assistance, or at least talk with someone from another nonprofit organization who has experience with these forms.

3. Annual Informational Return with the Franchise Tax Board

Most California tax-exempt organizations, except certain religious, educational, governmental and political organizations, are required to annually file an information return (FTB 199) or electronic notice (FTB 199N) with the Franchise Tax Board. FTB 199 or 199N is due 5 months and 15 days after the end of your organization's fiscal year. Exempt organizations with gross receipts over \$50,000 must file FTB 199 and pay a \$10 filing fee. Penalty fees are assessed for late filings and sometimes if filing was timely but incomplete.

Exempt organizations with gross receipts normally under \$50,000 can file a free annual electronic notice, Form 199N (e-Postcard), containing basic contact and financial

information. Failure to file FTB Form 199 or 199N over a three-year period will lead to automatic revocation of California tax-exemption.

Prepare FTB Form 199

- www.ftb.ca.gov/forms
- Select the relevant tax year
- Search for "199"

Submit it to the FTB

- Fee: \$10
- Make checks payable to the Franchise Tax Board
- By mail:
 - Franchise Tax Board
 - P.O. Box 942857
 - Sacramento, CA 94257-0701

Prepare FTB Form 199N

- https://www.ftb.ca.gov/online/199N_ePostcard/index.asp
- Instructions are available here:
 - <https://www.ftb.ca.gov/businesses/Exempt-organizations/Filing-Requirements-Form-199N.shtml>

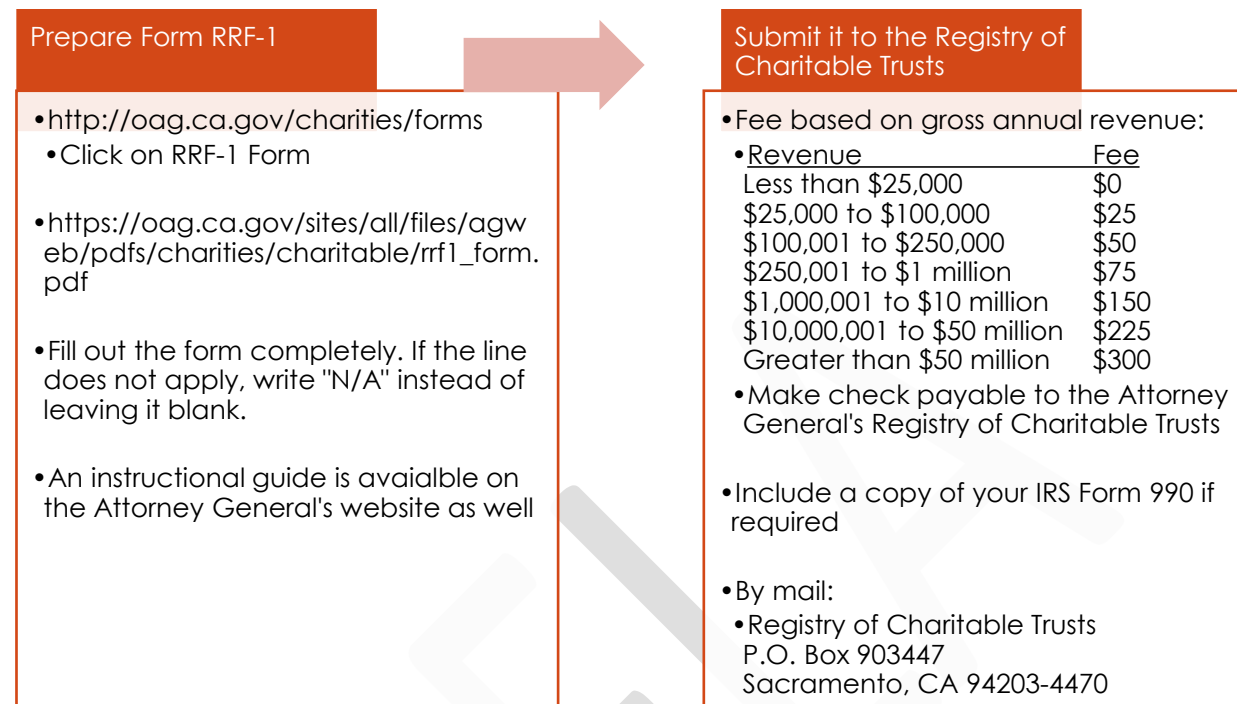
Which informational returns does your organization have to file?

Gross Annual Revenue	Federal Forms (IRS)	California Forms (FTB)
Receipts ≤ \$50,000	990-N	199N
Receipts < \$200,000 & Total Assets < \$500,000	990-EZ	199
Receipts ≥ \$200,000 or Total Assets ≥ \$500,000	990	199

4. Annual Report with the Attorney General's Office

All nonprofit corporations (except governmental agencies, religious organizations and some political action committees) must annually file Form RRF-1 with the Attorney General's office Registry of Charitable Trusts. This report is due 4 months and 15 days after the end of the organization's fiscal year. If your gross revenue or assets for the year were \$25,000 or more, you must also include a copy of your IRS Form 990. Failure to file means your non-compliance will be noted on the Attorney General's public website. Continued non-

compliance may result in revocation of your organization's ability to conduct business in California.



Charities that collect over \$1 million in contributions from California donors, and where contributions from California donors make up more than 50% of their annual income, must also file an additional financial report, Form CT-694, along with their Form RRF-1.

5. Annual Report to Directors and Members

Under the California Corporations Code, all Benefit Corporations, with limited exemptions, must make an annual report available to their directors and legal members within 120 days after the close of the fiscal year. The exceptions to this rule are:

- Religious Corporations need not report to members unless its bylaws require so.
- Public Benefit Corporations that receive less than \$25,000 in gross revenues or receipts during a fiscal year must only provide an annual report to its board of directors, not to its membership (if any).
- Mutual Benefit Corporations that receive less than \$10,000 in gross revenues or receipts during a fiscal year need not prepare an annual report.

At a minimum, the report must contain information on assets, liabilities, revenue, expenses, and certain self-dealing transactions or indemnifications. Many organizations choose to make this report publically available in the interest of transparency.

6. Changes to the Articles of Incorporation

Any amendments to a nonprofit corporation's Articles of Incorporation must be filed with the Secretary of State's office. This can be done in one of the following ways:

- A. By filing a Certificate of Amendment stating that:
 - The articles shall be amended to read as set forth in full in the certificate;
 - A particular provision, identified by section, is stricken from the articles; or
 - The provisions set forth in the certificate are added to the articles.
- B. By filing a Certificate of Restated Articles of Incorporation stating that:
 - The Articles of Incorporation of this corporation are amended and restated to read: [Insert new Articles of Incorporation].

The Certificate of Amendment or Restated Articles must also show that the amended/restated articles were approved by the board of directors and members of the organization. If the organization has no members, then the statement "the organization has no members," must be a part of the Certificate. The Certificate must be signed by both the President and the Secretary.

Prepare the new articles

- Sample forms:
 - Certificate of Amendment
 - <http://bpd.cdn.sos.ca.gov/corp/pdf/amendments/corp-amdtnp.pdf>
 - Certificate of Restated Articles
 - <http://bpd.cdn.sos.ca.gov/corp/pdf/amendments/corp-restnp.pdf>
- Include a cover letter with the organization's corporate name, number, and contact information

Submit it to the Secretary of State

- Fee: \$30 filing fee + \$5 certification fee
- Make checks payable to the Franchise Tax Board
- By mail:
 - Secretary of State
 - Document Filing Support Unit
 - 1500 11th Street, 3rd Floor
 - Sacramento, CA 95814

IMPORTANT NOTE

Significant changes to the Articles of Incorporation can adversely affect the continued tax-exempt status of a nonprofit corporation. Therefore, before changing the corporation's stated goals, purpose or significant operating procedures, changes should be checked with the IRS, Franchise Tax Board, California Attorney General, and/or an attorney.

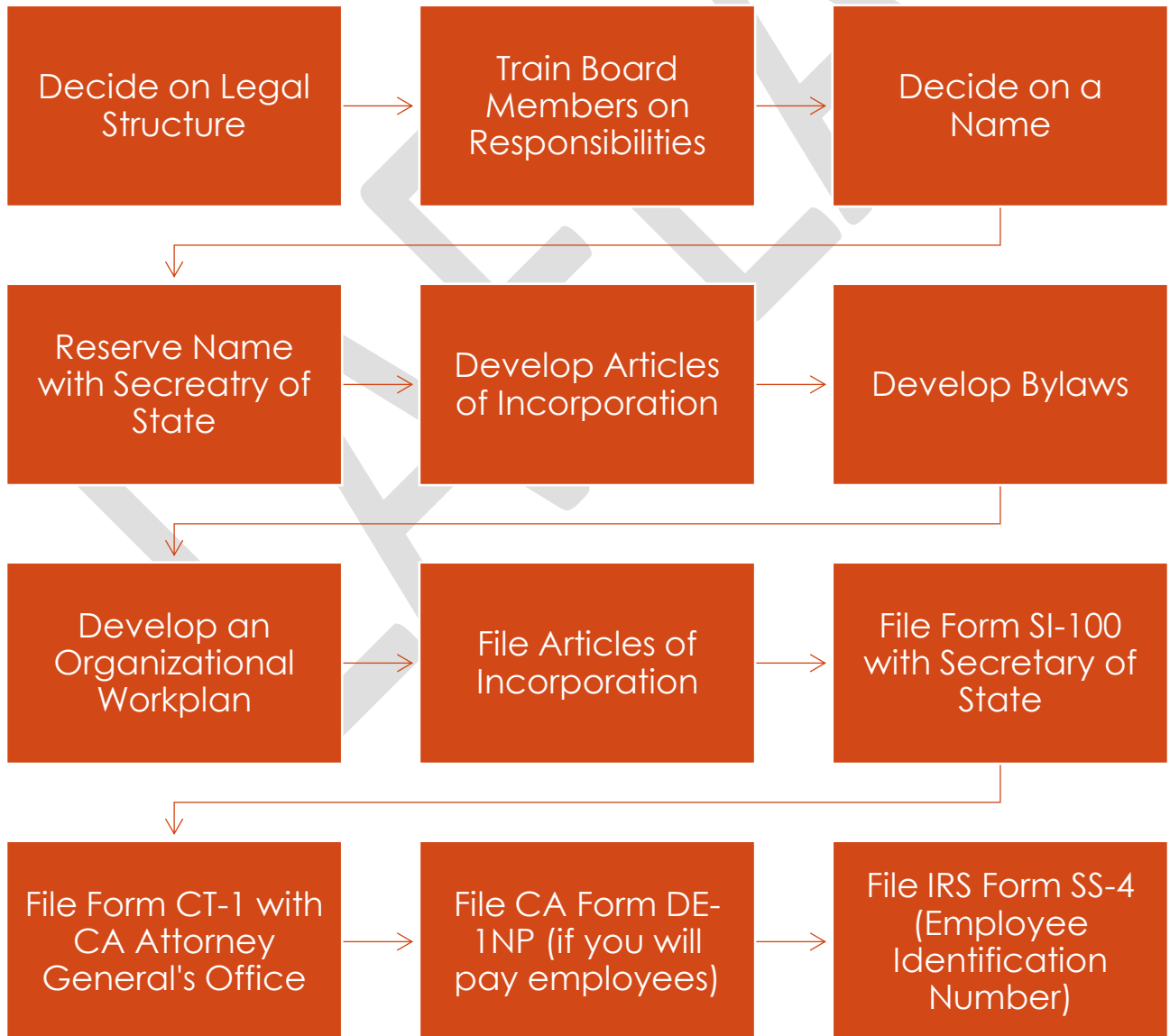
APPENDIX

A. FLOWCHARTS

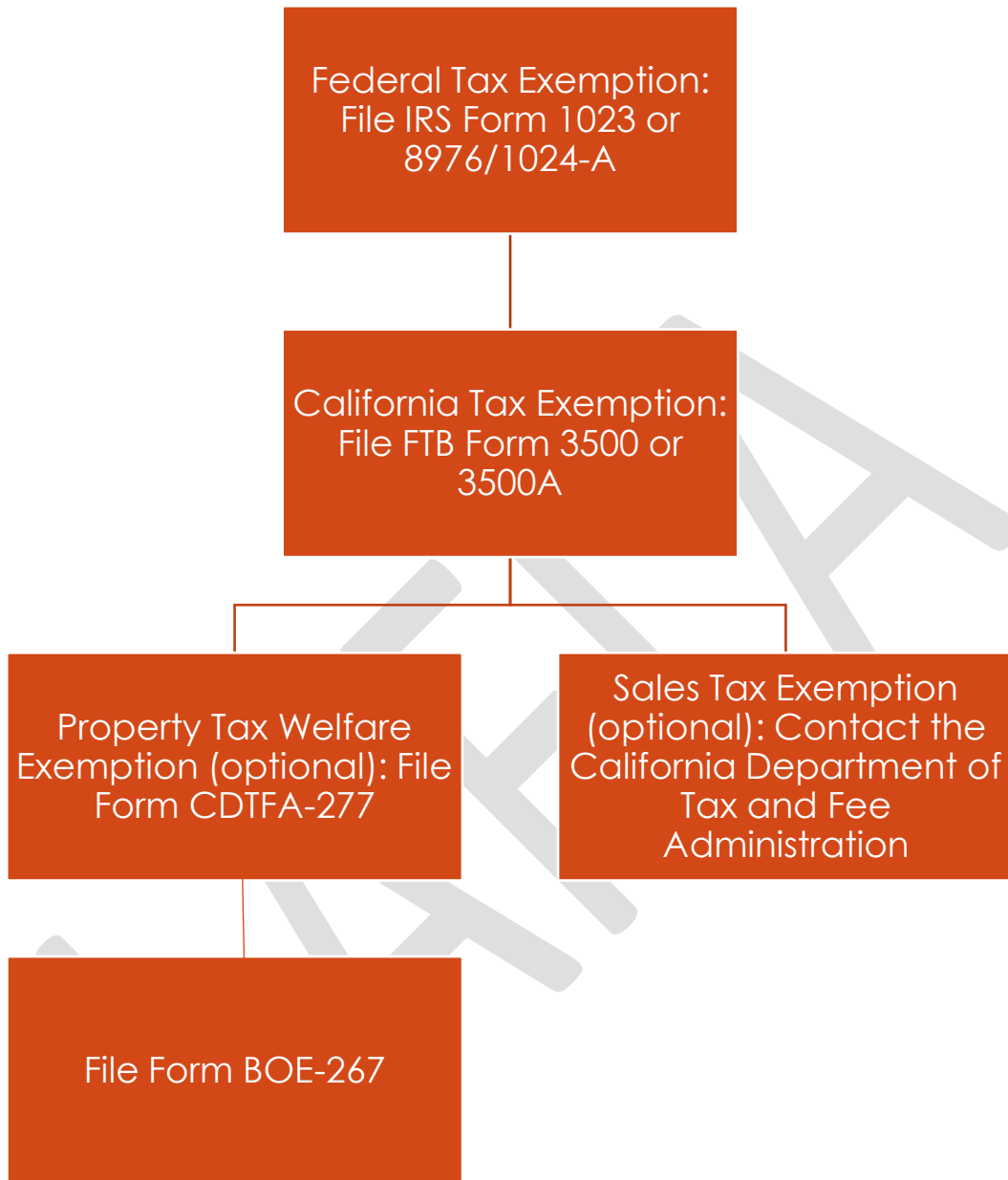
Pre-Incorporation



Incorporation



Tax Exemption



B. CHECKLISTS

Initial Set-up

_____ If your organization does not already have a Board of Directors in place, begin by identifying and recruiting potential board members.

_____ Have an introductory meeting of the Board of Directors to discuss the incorporation option.

_____ Identify funds available to pay for the initial filing fees.

Formation and Incorporation Process

_____ Reserve a corporate name with the California Secretary of State (optional but recommended).

_____ Draft and file Articles of Incorporation with the California Secretary of State.

_____ Draft corporate bylaws.

_____ Complete SI-100, Statement of Information (Domestic Nonprofit Corporation) and file with the California Secretary of State.

Complete Initial Registration with State Attorney General's Registry of Charitable Trusts using Form CT-1 or URS v.4.02 within 30 days of receipt of property or assets by corporation.

If your organization will have employees, complete Form DE-1NP, Registration Form for Nonprofit Employers, and file it with the State of California Employment Development Department.

Procedures for Securing Tax Exempt Status

Complete and file IRS Form SS-4, Employer Identification Number.

File IRS Form 1023, Application for Recognition of Exemption, or IRS Form 8976, Notice of Intent to Operate Under Section 501(c)(4) and optionally IRS form 1024-A, Application for Recognition of Exemption (use IRS instructions for the forms).

If filing IRS Form 1024-A, also file IRS form 8718, User Fee for Exempt Organization Determination Letter Request.

If appropriate, file IRS Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation.

File IRS Form 2848, Power of Attorney, or Form 8821, Tax Information Authorization (optional).

File California FTB Form 3500 (unless you submitted it during the incorporation process) or 3500A if filing after you get your IRS determination of 501(c)(3) status.

If appropriate, file Form CDTF-277 with the California Department of Tax and Fee Administration and then Form BOE-267 with the Los Angeles County Tax Assessor for property tax exemption.

Continued Reporting Requirements

Biennially (every other year) file SI-100, Statement of Information (Domestic Nonprofit Corporation) with the California Secretary of State.

Annually file the appropriate FTB Form 199 with the Franchise Tax Board.

Annually file the appropriate IRS Form 990 with the Internal Revenue Service.

Annually file Form RRF-1, Registration Renewal Fee, a copy of the appropriate IRS Form 990, and Form CT-694 (if applicable) with the California Attorney General's Registry of Charitable Trusts.

If you have over \$25,000 in gross revenues and receipts in a fiscal year, prepare and distribute an Annual Report to all directors and any members.

File any changes to the Articles of Incorporation with the California Secretary of State.

C. YEARLY CALENDAR DEADLINES

Calendar Information

Our **date of incorporation** is _____.
(the date stamped on our Articles of Incorporation)

Our **fiscal year** is from _____ to _____ each year.
month / date month / date

Important Deadlines

Our **Annual Report** is due to our **directors and members** by _____.
(120 days/4 months after our fiscal year ends)

Our **990/990EX/990-N** is due to the **IRS** every year by _____ 15th.
(5 months after our fiscal year ends)

Our **199/199-N** is due to the **FTB** every year by _____ 15th.
(5 months after our fiscal year ends)

Our **RRF-1** is due to the **Attorney General** every year by _____ 15th.
(4 months after our fiscal year ends)

Our **SI-100** is due to the **Secretary of State** every EVEN/ODD year in _____.
(month of incorporation)

OPTIONAL: Our **BOE-267A** is due to the **County Assessor** every year by February 15th.