



2024 EDITION

# GUIDE TO STARTING A NONPROFIT

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**UNA Guide to Starting a Nonprofit**

**2024 Edition**

**A PUBLICATION OF UTAH NONPROFITS ASSOCIATION**

**[utahnonprofits.org](http://utahnonprofits.org)**

## Introduction

Nonprofits bring hope, joy, inspiration, and healing to the communities they serve. Your interest in starting a nonprofit confirms that you want to make the world a better place. You'll find that you are in good company, there are over 1.5 million nonprofits in the United States and over 11,000 of these call Utah home. Before you start this work—and starting a nonprofit *is* work—give thought to whether starting a nonprofit will create the impact you desire. You may find that joining an existing nonprofit, starting a chapter of a national or regional nonprofit, or another option will better serve your goal to improve our communities.

Once created, a nonprofit belongs to the community. Founders, while essential to the organization's mission, never own a nonprofit. The board of the nonprofit assumes the legal responsibilities of duty of care, loyalty, and obedience. The *UNA Guide to Starting a Nonprofit* provides high-level information on the most basic steps for starting a nonprofit, a complex, multi-step process that may require expert advice from accountants and lawyers. Nonprofit law can change, and this guide may become out of date, so we encourage you to consult with a lawyer or accountant for advice specific to your organization and situation.

### The Details

The *UNA Guide to Starting a Nonprofit* is not a substitute for legal or risk management advice. This guide is a supplement to, not a replacement for, the instructions provided by the government entities overseeing nonprofit corporations. A nonprofit organization is not a business plan; it is a tax structure. Utah Nonprofits Association offers this guide as strictly legal information—not as legal advice. If you have further questions or concerns, please seek professional advice. Your use of this guide in no way creates any responsibility or liability for Utah Nonprofits Association.

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## Considerations

**Before you form a nonprofit, please consider these suggestions:**

## Considerations

1. **Do Your Research:** Starting a nonprofit is just one of many ways to make an impact in the community. You might find that joining an existing effort, creating a special program for an existing organization, finding a fiscal sponsor, starting a local chapter of or replicating (with permission) an existing nonprofit, or even remaining unincorporated could provide the mechanism to create the impact you seek—with far fewer challenges.

Starting and sustaining a nonprofit is a significant challenge. There are currently more than one million charitable nonprofits in the United States, and many struggle to attract funding. In Utah alone, there are over 11,000 nonprofit organizations.

Clarifying these points will increase your likelihood of success:

- Identify and quantify the need for the specific organization.
  - Research whether there are other groups already engaged in the same or similar work.
  - Ensure that starting a new nonprofit is the right solution for the community.
2. **Build a Foundation for Success:** Should a new nonprofit be the best solution for the community, build the structure for the organization.

- Decide who should be involved and who will serve on the organization's board.

Note # 1: A good rule of thumb is to choose a minimum of three board members who are unrelated to the founder, or each other, through family or business ties.

Note #2: An odd number of board members may prevent deadlocks.

The IRS encourages specific governance practices for 501(c)(3) board composition. Here is a short video from NEO Law Group regarding five things to consider when selecting an initial board of directors.

- Create a business plan that includes when to file paperwork, how to find assistance, and how to create and sustain the nonprofit.
3. **Familiarize yourself with Filing for Federal Tax-Exempt Status:** As noted, UNA does not provide legal assistance for organizations seeking assistance with their application for tax-exemption. We recommend you review IRS Stay Exempt Tutorials that offer background on what it takes to become a 501(c)(3) organization that is recognized by the IRS as tax-exempt. See *also* IRS Publication 557.

- Additional information can be found [here](#). You'll want to keep in mind that once your idea has been formed into a nonprofit, it belongs to the community—specifically the community which your mission serves.

### **What is a nonprofit in Utah?**

A nonprofit is an organization that has a mission that serves the public interest, has filed incorporation papers with the State of Utah as a nonprofit, and receives federal and state tax exemption. In addition to registering with the State of Utah, nonprofit organizations must also seek and receive tax-exempt status from the Internal Revenue Service (IRS). The IRS provides tax exemptions to 29 different types of organizations and each type is covered by a different subsection of the 501(c) section of the tax code. Public charities, nonprofits with 501(c)(3) tax status, including Utah Nonprofits Association, are exempt from paying most federal income tax, and donations to them are exempt from tax. When this guide refers to “nonprofits,” it refers to organizations that have received IRS recognition of status as a 501(c)(3) organization.



## **What is a nonprofit?**

Tax status aside, much of nonprofit administration and operations are like those of for-profit organizations. Effective nonprofits have visions and strategies, need a diversified revenue stream, market their organizations, and file tax forms. While sustainability for both falls on their ability to generate revenue, one of the most important differences is ownership. For-profit entities may be owned by stockholders, partners, individuals, etc., but nonprofits are owned by the community. In the simplest of terms, owners of for-profit businesses are legally entitled to take profit from the organization, but nonprofits are forbidden from inuring (providing monetary or nonmonetary assets) officers, directors, or staff members or providing private benefit to an organization or individual. Any amount of inurement, no matter how small, can jeopardize an organization's tax-exempt status.

### **Reasons NOT to form a nonprofit**

In some situations, it may be more advantageous to form a for-profit business, function informally without 501(c)(3) exempt status, or partner with an existing nonprofit. Forming a for-profit business maintains ownership of the assets, vision, and mission. Founders of nonprofits, after dedicating their efforts and energy to creating a nonprofit, have seen volunteer boards of directors shift the direction of the organization from their original vision. If always maintaining control over the mission and vision of the nonprofit is important to the founder, they should strongly consider forming a for-profit company. A nonprofit serves the community, not a limited number of individuals. There are no "owners," in the traditional sense, of a nonprofit organization. This is one reason that the government requires nonprofits to have a volunteer board of directors. Volunteer boards of directors promote community ownership of the organization.

### **Can a nonprofit begin operation before it receives the 501(c)(3)-determination letter?**

Yes. A nonprofit organization, meeting the requirements of section 501(c)(3), can operate on a limited basis as an exempt organization before it receives its determination letter from the IRS. If a 501(c)(3) application, Form 1023, is filed within 27 months of the date the organization was incorporated, the effective date of exemption will be retroactive to the date of incorporation. Donations made before the ruling can be accepted and are retroactively tax deductible. If filing Form 1023 with the IRS is delayed beyond 27 months, the effective date of exemption may be considered the date the IRS receives the Form 1023. When this happens, prior contributions will not be deductible and income may be liable for corporate income taxes. It is advisable that if an organization is operating before receiving an IRS determination letter, that the organization communicates this to donors and constituents.

### **FAQ: How long does it take to get nonprofit status?**

The time it takes to receive nonprofit status varies widely and an exact time frame cannot be provided. Some steps take less time than others. For example, incorporating with the State of Utah can be relatively straightforward—prepare the Articles of Incorporation and submit

them to the Division of Corporations and Commercial Code. Other steps, like completing IRS Form 1023 or Form 1023-EZ and the Bylaws can take longer. All are encouraged to be patient and use this time to plan for organizational sustainability and board member recruitment.

**FAQ: Is it possible to expedite the ruling process?**

The IRS will only approve expedited processing of an application when the request is made in writing and contains a compelling reason for its prioritization. [The IRS provides more information and direction.](#)

**FAQ: Can my nonprofit have positive net revenue aka ‘make a profit’?**

Yes! The title “nonprofit” can be misleading. A nonprofit organization can, and should, have more income than expenses. It is healthy for an organization to have a fiscal reserve to provide insulation against changes in funding, requests for services, or changes in operation. Some nonprofits are fortunate enough to manage an endowment, from which they either spend or reinvest the interest gained on the money. What distinguishes a nonprofit from a for-profit business is not whether the organization makes money but what happens to the profit. For-profit enterprises may take income out of the organization to pay dividends, bonuses, or to fund other initiatives, but any money raised by a nonprofit organization must be used to fulfill its mission.

**FAQ: When can we set up a bank account?**

To set up a bank account, an organization generally needs to present the following documents:

- The Tax Identification Number (T.I.N.). The T.I.N. number (sometimes called an EIN or Employer Identification Number) comes from the IRS and is obtained by applying for an Employer Identification Number using the Form SS-4.
- Proof of registration with the State of Utah, such as the stamped Articles of Incorporation.
- Financial Institutions will also check that the nonprofit has an updated business license and updated board of directors list on file with the State of Utah.
- Additional items may also include meeting minutes from the board affirming that the leader has authority to open the account.
- It is recommended that the organization consult the financial institution it intends to do business with for a full set of required documents.

# **Steps to Organizing a Nonprofit**

## **An Overview**

## **An Overview of Steps**

1. Choose a name for the organization and check its availability on the [Utah Department of Commerce website](#). Prepare and file an application for [Reservation of Business Name](#) (optional).
2. Recruit Incorporators and a Board of Directors
3. Appoint a Registered Agent
4. Prepare and file Articles of Incorporation with State of Utah
5. Obtain an Employer Identification Number (EIN) from the IRS
6. Prepare Bylaws
7. Establish a Conflict-of-Interest Policy
8. Apply for 501(c)3 Status with the IRS
9. Secure Utah State Tax Identification Numbers, Accounts, and Exemptions
10. Research and Prepare Annual Filings with the State of Utah (Formerly: Prepare and File a Charitable Organization Permit)

### **Step 1: Choose a Name for the Organization**

The decisions made today about the nonprofit will impact the organization for years to come. Consider the long-term implications of choosing a name and the size and structure of the board of directors. Does the name immediately tell people what the organization is intended to do? Does the acronym make sense?

## Choosing a Name

To avoid trademark conflicts, check the following resources:

- The [Utah Department of Commerce website](#)
- Search the web for the desired name as well as for similar names. Make sure the preferred name is not being used as a domain name, which might violate a trademark.
- [Federal trademark database](#)

### Reserve the Business Name (optional)

While it is not required to reserve the name before filing the Articles of Incorporation, the State of Utah, through the [Department of Commerce](#), allows organizations to reserve their name for 120 days. This temporarily holds the name while the process of filing of the Articles of Incorporation is completed. Once the Articles of Incorporation are filed with the State of Utah, the desired name that was held will be assigned to the organization.

## **Step 2: Recruit Incorporators and Board of Directors**

The incorporator (founder) signs the Articles of Incorporation; this can be one or more individuals. The board of directors make up the governing body of the nonprofit corporation and are committed to the purpose and success of the organization. The IRS requires a minimum of three unrelated individuals and Utah law requires them to be 18 years of age or older.

## **Recruit Incorporators and Board of Directors**

### **FAQ: How should we structure the board of directors?**

Utah law gives nonprofits flexibility in determining the size, shape, composition, and functioning of their boards. The size of the board should reflect the nature of the organization. Boards may be structured in many different ways and include many different kinds of people. Typical board structure includes governing, advisory, and working boards.

### **FAQ: Who should be a founding board member?**

Having the right people serve on the Board of Directors is important for both new and mature nonprofits. You'll want to look for a variety of people, including people who are willing and able to work, people with deep ties to the community, visionary leaders who are passionate about the cause, as well as people that are able to help raise money to support the nonprofit. Since all nonprofit boards of directors have a fiduciary responsibility for the organization—which means they have a legal relationship of trust to prioritize the organization's interests when making decisions—it is imperative to make sure that the Board includes individuals who are savvy, invested in the mission, and can help the nonprofit work towards long-term sustainability.

### **FAQ: How big should the board be?**

Utah state law requires that you have secured at least three board members before the Articles of Incorporation may be filed. As you consider how many people should be on the Board, note that too few members can place a tremendous burden on a small number of people and too many members can become unwieldy. Many organizations find that between five and nine members is the right size—but that can and will vary by organization. Other considerations for determining the right size of the Board include the roles of the board members, the tasks to be accomplished, and the organization's mission. Board service can be made more effective and efficient with the use of committees. Committees should support the board's activities and can be made up of non-board members. By dividing board activities into committees, you can involve more people in the organization (and even find potential board members) and shorten board meetings by taking care of specific details in committee meetings.

### **FAQ: Why are we required to have at least three board members?**

According to the Utah Code, nonprofit organizations are required to have a minimum of three board members. This minimum requirement exists to help a new nonprofit expand beyond the incorporator and founders and better protects the public interest—the ultimate beneficiary of the nonprofit and all 501(c)(3) organizations.



**FAQ: How long should a board member serve?**

Your Bylaws will typically spell out the length of service for Board members. Two- or three-year terms are common, although there are different thoughts about the ideal length of service. That length of time allows board members to learn the workings of the organization without burning out. Additionally, there may be a need to provide opportunities for board members to serve multiple terms. Bylaws provide both guidance to the board, and protection should a problem occur. If a problem arises with a board member, the best, and sometimes the only way to remove that board member is through board term limits. By enforcing term limits, the board remains fresh, and over the life of the organization, more people can be involved in the organization. The recommendation is to have a limitation on no more than 3 terms, the preferred is two terms. Having someone serve longer than six years in one continuous period is not recommended. Board members can always come back to the board after a break. As a practical example, if the organization chooses three-year terms, it is recommended they be limited to two terms, or six years. Staggering board terms helps maintain institutional knowledge that could be lost when board turnover every two or three years.

**FAQ: What constitutes a quorum?**

The Bylaws should define the number required to make a quorum, the minimum number of board members who must be present to ensure the proceedings of the meeting are valid. Most often, it is either a majority or two-thirds of the board.

**FAQ: Can a board member receive payment for service on the board? Or, can a board member receive payment for services to the organization which are separate from their role on the board?**

Board members may not be paid for their service on board. One of the key restrictions that the IRS places on a nonprofit organization is that the board members be volunteer representatives of the community. Board members may, however, be compensated for gas, mileage, and expenses associated with their service on the board. Although it is best to separate the activities of the board and the activities of staff and/or contractors, there are occasions when a board member may provide services that are separate from their board service. For example, a dance company may have a member of the board who is also an instructor for the company. If this occurs, be careful to keep clear records of the board members' service and their paid work.

**FAQ: How often should the board meet?**

As often as needed, but not so many times that board members do not feel their time is well spent. Much will depend on the type of board the organization has. A governing board may only need to meet on a quarterly basis to approve the budget or set new policies. A working board may need to meet monthly to ensure the health of the organization and provide prompt attention to important decisions. Try to limit the number of meetings or limit the

length of meetings by using time-savers such as separate ad hoc committees or consent agendas. One way to maintain efficient board meetings is to use committees. Assign board members to committees as directed by the mission and strategic plan. At the board meeting, each committee could then make a report (or have an enclosure in the consent agenda about committee work) and ask for approval on specific items. Using this format can empower board members and encourage efficiency at board meetings.

### **Step 3: Appoint a Registered Agent**

The registered agent is a legal appointment and is responsible for receiving legal notices on behalf of the nonprofit and must be physically located in Utah with an office that is open during regular business hours.

## **Appoint a Registered Agent**

The registered agent will serve as the main point of contact between the State of Utah, courts, and the nonprofit. This needs to be secured prior to completing the Articles of Incorporation.

### **FAQ: Can an individual serve as my nonprofit registered agent?**

Many nonprofits consider appointing a board member or employee as their registered agent. While this approach may work in some cases, it can have significant downsides. The registered agent must be available during all business hours to receive Service of Process. Individuals with busy professional and personal schedules often cannot fully meet this requirement. As a result, the nonprofit's risk of missing service of process increases. While appointing a board member or employee may sound like a good deal in the short term, the risks and long-term costs are often higher. Board and personnel turnover increase the ongoing cost of maintaining nonprofit registered agents. Each time a registered agent is no longer able to serve in that capacity, the nonprofit must file an update with the State of Utah.

#### **Step 4: Prepare and file Articles of Incorporation with State of Utah**

Although a nonprofit organization can take other forms, most nonprofit organizations are corporations which are formed under state law. To form a Utah nonprofit corporation, Articles of Incorporation must be filed with the Utah Department of Commerce. The Articles of Incorporation is the only document required by the State of Utah for forming a nonprofit and it establishes evidence of an agency's nonprofit nature and provides general information about the organization.

## **Prepare and file Articles of Incorporation with State of Utah**

Utah's Department of Commerce provides sample Articles of Incorporation forms, guide sheets, informational packets, and answers to frequently asked questions on its website.

The IRS will require additional terms in the Articles of Incorporation above and beyond what the State of Utah requirements.

To satisfy the State of Utah, the Articles of Incorporation must contain the following information:

1. Name of Corporation
2. Purpose or purposes for which the corporation is being formed limiting it to charitable purposes
3. Registered Agent
4. Incorporators: Name, signature, and address of each incorporator
5. Voting Members
6. Shares
7. Assets
8. Dissolution policy
9. Principal Address
10. Directors: Name and address of each board of directors

When filing the Articles of Incorporation, the organization must submit two signed original copies to the Utah Department of Commerce with a filing fee payable to the State of Utah.

### **FAQ: Dissolution of Assets?**

Both the State of Utah and the IRS require that Articles of Incorporation include a dissolution clause. Should the nonprofit dissolve, at a future meeting and with the approval of the board of directors, the organization's assets must be distributed for exempt purposes described in section 501(c)(3). A sample clause is included in IRS instructions for Form 1023, page 7: "Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose."

### **FAQ: Declaration of Distributions?**

Although the State of Utah does not require a Declaration of Distribution in the Articles of Incorporation, this is an important issue for the IRS. In evaluating a nonprofit's exempt status, the IRS is looking for assurance that the nonprofit is organized and operating exclusively for its exempt purpose and those assets are being distributed in a fiduciary manner toward charitable purposes.

### **FAQ: Does Incorporation Limit My Liability?**

Incorporating the nonprofit creates a separate entity from the individuals responsible for its creation and management. In most cases, if the board of directors exercises its duties in a responsible prudent way and the assets of the organization are not comingled with those of the people running the organization, individuals are protected from personal liability. Since this protection is not absolute, it is recommended that the organization purchase a Directors and Officers insurance policy. It is important to understand the legal responsibilities and duties of each board member and make a reasonable review of their performance to ensure they are carrying out their duties diligently. It is encouraged that organizations consult an attorney to ensure appropriate consideration of all legal implications of incorporating.

### **FAQ: How Can We Amend the Articles of Incorporation?**

Most organizational changes can be communicated in the annual report that an organization must file each year with the State of Utah. However, if the organization has a change in purpose or to the Articles of Incorporation, then the organization must complete the Utah Department of Commerce Articles of Amendment to the Articles of Incorporation (Non-Profit) form.

**Step 5: Obtain an Employer Identification Number (EIN) from the IRS**

This form is required. The Employer Identification Number (E.I.N.) becomes the number by which the organization is tracked federally.



## **Obtain an Employer Identification Number (EIN) from the IRS**

### Prepare and file IRS form SS-4

An E.I.N. is to an organization as a social security number is to a person. The IRS uses E.I.N.s for internal tracking and to share publicly available documents, including completed 990s. The two numbers are not interchangeable.

### **FAQ: What date should we use for the date of Incorporation?**

This question usually arises when completing the Federal Forms SS-4 and Form 1023. The IRS considers the date of incorporation to be the date that the Articles of Incorporation were approved by the Utah Division of Corporations.

## **Step 6: Prepare Bylaws**

The Bylaws are akin to the **organization's Constitution**. They contain the operating rules and provide a framework for the **organization's management** procedures. They are the tools of internal accountability.

### **FAQ: How can we amend the Bylaws?**

If there is a change in the purpose or the activities of the organization, an amendment must be filed with the IRS. Submit a copy of the amended Bylaws along with signatures of at least two members of the board to the IRS.

## Prepare Bylaws

While the State of Utah does not require nonprofit corporations to have bylaws, the IRS does and requires that a copy of them be included with a copy of Form 1023: Application for Recognition of Exemption. For most organizations, federal tax law does not require specific language for bylaws. Donors, grantors, and some State of Utah licensing agencies will also want to see that the organization has a complete set of bylaws.

The power to adopt, amend or repeal Bylaws is vested in the board of directors unless otherwise provided in the Articles of Incorporation or in the Bylaws. The Bylaws establish the normal working rules for the regulation and management of the organization's affairs and therefore should be simple and flexible. If the organization elects to be a member organization, particular care should be taken in defining the voting members and in all the proceedings for the election of the governing board.

At a minimum, Bylaws should contain the following information:

- **Purpose:** The name, purpose, and goals of the organization (this may also contain the organizational mission.)
- **Directors:** The number, qualifications, terms of office, definition of a quorum, dates of annual meeting, and procedure for filling board vacancies.
- **Required Officers:** Each board is required to have officers such as President/Chair, Vice-President/Vice-Chair, Secretary, and Treasurer. The Bylaws should define basic numbers and roles of officers. One person may hold more than one office simultaneously, except for the offices of President/Chair and Secretary.
- **Executive Committee:** A majority of the board may designate two or more board members as an executive committee to act on behalf of the board in the interest of the organization, except to approve or recommend items requiring oversight of the full board, fill vacancies on the board, or amend Articles or Bylaws. Other committees and committee responsibilities may be outlined in the Bylaws as well.
- **Members:** If the organization has members, the Bylaws should outline their qualifications, rights, and duties. Bylaws should also contain any pertinent information about regularly scheduled meetings and member responsibilities.
- **Indemnification:** Bylaws should contain provisions for indemnification by the corporation of its directors, officers, and employees with respect to claims brought against them for actions taken in good faith, which the person reasonably believed to be in the best interest of the organization.
- **Amendments:** Provide instruction on the process of amending the Bylaws. As a fluid document, the Bylaws of a nonprofit should be amended to reflect the current needs of

the organization. All amendments must be authorized by the board of directors as outlined in the Bylaws. As a matter of good practice, amendments should be noted on the copy of the Bylaws contained in the minutes. Because of the various legal requirements involved, the organization's attorney should be consulted prior to making any significant amendments to either the Articles or the Bylaws.

- **Miscellaneous:** The Bylaws may include information about other records kept by the organization including minutes, fiscal year, a Conflict-of-Interest Statement, contracts with the organization, basic financial requirements, and any other issues that may be important to the organization.

### **Step 7: Establish a conflict-of-interest policy**

The conflict-of-interest policy protects the nonprofit's interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, an officer, or other key personnel or might result in a possible excess benefit transaction.

### **Establish a conflict-of-interest policy**

The application to the IRS for exemption will require that both the bylaws and the conflict-of-interest policy are approved and adopted.

These policies generally include:

- A disclosure statement that is completed and signed by the board of directors and key personnel each year.
- The process for reviewing potential conflicts.
- The process for handling a conflict when it arises.
- The consequences for violating the policy.

### **Step 8: Apply for 501(c)(3) status with the IRS**

Organizations that meet the requirements of Internal Revenue Code section 501(c)(3) are exempt from federal income tax and charitable contributions made by individuals and corporations are tax deductible. To receive this benefit, organizations must apply to the IRS by filing Form 1023 or Form 1023-EZ, Application for Recognition of Exemption.

## **Apply for 501(c)(3) status with the IRS**

Before starting the process of applying for a tax exemption, determine if completing the streamlined application, Form 1023-EZ, is possible. Consult the list of questions at the end of the instructions on Form 1023-EZ to determine the qualifications of this streamlined application, which includes a different application fee.

### **FAQ: Are there organizations that are not required to file Form 1023, Application of Recognition of Exemption?**

Yes. The IRS gives automatic exemption to two types of organizations:

1. Churches, conventions or associations of churches, or church-affiliated auxiliaries of a church, religious schools, etc.
2. Any organization (other than a private foundation) normally having annual gross receipts of not more than \$5,000.

The IRS considers these organizations as exempt automatically if they meet the requirements of section 501(c)(3). However, if the organization hopes to seek significant donations or grants, then donors will likely require the organization to have a tax-exempt letter from the IRS.

### **FAQ: What are the requirements once annual gross receipts are over \$5,000?**

Once annual gross receipts are over \$5,000, the organization has 90 days after the end of the tax year to file Form 1023.

### **FAQ: Should I file Form 1023 even when it's not required?**

Some organizations may choose to file Form 1023 even though it is not required for the following reasons:

1. In order to receive a determination letter that recognizes the organization's 501(c)(3) status and specifies whether contributions are tax deductible.
2. To reassure potential contributors and foundation grant officers that the organization is tax exempt under 501(c)(3). The IRS publishes a list of tax-exempt organizations on their website so contributors can check online.
3. To protect the organization. If, down the road, the IRS does not agree that the organization qualifies for tax-exemption the organization might end up paying income taxes on its revenue.



While an organization may be exempt from filing Form 1023, it is still required to file 990-N (e-postcard). This tax return is required for nonprofit organizations that normally have gross receipts of less than \$50,000 per year.

Completing Form 1023 proves three basic facts about the organization to the IRS:

- The organization is organized and operated exclusively for one or more exempt purposes.
- The organization will not be organized or operated for the benefit of private interests.
- The organization will not substantially attempt to influence legislation (unless it elects under allowable provisions) or participate to any extent in a political campaign for or against any candidate for public office.

Understanding these three requirements will make completing Form 1023 easier. The IRS provides accompanying instructions for the Form 1023 that are more detailed. Some areas of the form require more thought, we have included those for reference below.

### **Form 1023 - Part IV: Narrative Description of Your Activities: Past, Present, and Planned Activities**

The narrative may very well be the most important section of Form 1023 for determining exempt status. Approved applications will be available for public inspection. A variety of interested parties—including potential donors—may use the documents to evaluate the organization. Take full advantage of this opportunity to share your mission with the public by explaining how each activity furthers the exempt purpose and how it will be funded. Attach newsletters, brochures, or similar documents. It may be beneficial to ask someone outside of the organization to review the application to help clarify important points. Be over-inclusive rather than under-inclusive when describing the organization's activities to eliminate any questions about their propriety.

### **Form 1023 - Part VIII: Specific Activities**

Questions 1 and 2 relate to lobbying.

It is important to the IRS to confirm that the organization is not going to spend a substantial percentage of its resources on lobbying. This part of the form will ask if the organization would like to make the 501(h) election.

Take the powerful, free, and easy 501(h) election

Sometimes called the best, easiest, and cheapest insurance in America, this little-known form can simplify life for most 501(c)(3) charitable nonprofits advancing their missions through advocacy. *NOTE: Make sure no government funding is used to fund lobby work, including staff time funded by government monies.*

Can nonprofits lobby? - YES! Lobbying is just one form of advocacy.

What is Advocacy? - Advocacy makes a nonprofit's voice heard regarding the issues most closely related to the organization's purpose and mission. Advocacy can be used by all nonprofit organizations to help further their goals, regardless of tax-exempt status or IRS designation.

**Advocating** for the organization's mission may include:

- Contacting city, state, and federal representatives to share information about the organization's mission and work.
- Inviting representatives or members of the community to visit the organization or to engage in informational sessions about the organization.
- Creating an email or social media campaign to share information and to promote events, projects, or initiatives.
- It is an ongoing effort to engage representatives, policymakers, the community, donors, and other stakeholders.

Advocacy is more about education and promotion of services than trying to make a particular legislative change.

### **What is Lobbying?**

Lobbying supports or opposes a specific piece of legislation or regulation. Staff or volunteers may work to influence legislation or legislators on behalf of the organization, or an organization may ask for public support on a specific issue.

Types of legislation that nonprofit organizations frequently lobby for or against include laws, resolutions, nominations, initiatives, proposals, and referendums.

Most often, lobbying efforts take place immediately before a vote. However, some organizations lobby in support of a specific piece of legislation long before it is voted on by legislators or the public.

While charitable nonprofits are permitted to do some lobbying as described above and advocate for their missions, nonprofits are never allowed to endorse political parties or candidates who are running for political office.

Question 3 asks about gaming activities.

Note that raffles are considered gaming as they are games of chance, but opportunity drawings are not.

## **Part IX: Financial Data**

Provide the most accurate budgetary history or projection you can.

## **Part X: Public Charity Status**

Questions 1-5: Public charity or private foundation? The difference is significant. All 501(c)(3) organizations are classified either as a public charity or a private foundation. The difference between the two can have an impact on the tax deductibility of donations, donors, and the organization. Typically, a private foundation is established for the purpose of giving money under the auspices of an individual, a family name (for example: Hemingway Foundation), or a business.

The determination between private foundation and public charity depends on the source of its funding. Public charities support their mission by raising funding through donations and grants from the general public—individuals, government, corporations, and foundations. Private foundations typically receive their funding from a single source—an individual, family, or corporation. To maintain their tax status, public charities must demonstrate to the IRS that they ordinarily receive substantial support (typically 1/3) from the general public. While public charities must be governed by an unrelated board of directors, private foundations have greater latitude and can be led by people chosen by the donor. The IRS assumes the organization is a private foundation unless proven otherwise. It is in the best interest of most nonprofits to prove that the organization is a public charity. Both private foundations and public charities are required to file a Form 990 tax return.

## **Application Package**

The IRS requests that supporting documents be submitted in a specific order. Follow the checklist located at the end of Form 1023 to assemble the application package. When possible, consider using the IRS's "fillable" Form 1023. Remember to retain a copy of the completed Form 1023 and all supporting documents for the organization's permanent records.

## **Prepare and File IRS Form 8718**

Form 8718: User Fee for Exempt Organization is submitted with the Form 1023 as part of the application package. The law requires a user fee with each application for determination letter request.

User fees change over time, so check the current amount on the IRS website to ensure correct payment. As of May 2020, the user fee for Form 1023 is \$600 and the user fee for Form 1023-EZ is \$275.

See Form 1023 checklist for instructions on where to include Form 8718 in the application package.

**FAQ: What do we do if the organization has been inactive for some time?**

For Utah: If the board has failed to file the Annual Report or, for some other reason, has lost its recognition by the State of Utah, the organization must file an Application for Reinstatement. The application is available from the State of Utah Division of Corporations.

For IRS: If the organization fails to file its Form 990 tax return for three years in a row, its tax-exempt status may be automatically revoked. If the tax-exempt status is automatically revoked for the organization, there are instructions on the IRS website for reinstating tax exempt status.

### **Step 9: Secure Utah State Tax Identification Numbers, Accounts, and Exemptions**

To apply for the state exemption, nonprofits need to complete and submit Form TC-160 and provide a copy of the IRS' Letter of Determination to the Utah State Tax Commission.

## **Secure Utah State Tax Identification Numbers, Accounts, and Exemptions**

Apply for appropriate exemptions

### **Exemption from Sales Tax**

To obtain exemption from sales tax in Utah, the nonprofit organization must first be recognized as an exempt organization by the IRS [i.e., 501(c)(3) organizations]. Once the IRS determination letter has been granted, include a copy with your application for sales tax exemption, Form TC-160 to the Utah State Tax Commission.

### **Exemption from Income Tax**

To obtain exemption from income tax, send a copy of the 501(c)(3) determination letter along with Form TC-161 Utah Registration for Exemption from Corporate Franchise or Income Tax to the Utah State Tax Commission. Some activities and sales of a nonprofit organization may be considered taxable by the State of Utah or the IRS. See below for more information.

### **FAQ: Is Utah tax exempt status retroactive?**

Although an organization may not receive tax and income exemption until it receives the determination letter from the IRS, the exemption may be retroactive. Income tax exemption is generally retroactive to the day of inception. Sales tax exemption is generally retroactive to the day of inception or three years, whichever is less.

**Step 10: Research and Prepare Annual Filings with the State of Utah (Formerly: Prepare and File a Charitable Organization Permit)**

Until May 1, 2024, any organization seeking donations was required to obtain a Charitable Solicitations Permit from the Utah Division of Consumer Protection. During the 2024 legislative session, the Utah legislature passed H.B. 43, *Charitable Solicitations Act Amendments*, which changed the annual filing requirements. Organizations no longer need a registration form from the Division of Consumer Protection to solicit in the state of Utah.

Beginning January 1, 2025, certain charities will be required to file their most recent Form 990 with the Utah Division of Corporations and Commercial Code. The information provided below is valid as of August 2024. Be sure to revisit the Division of Corporations website for new information and if possible, check with an attorney or other specialist to confirm the latest requirements.

## Research and Prepare Annual Filings

The Utah Charitable Solicitations Act, enacted to protect both consumers and legitimate nonprofits, required nonprofits to register annually with the Department of Commerce, Division of Consumer Protection. This legislation was amended in 2024 and changes are still taking effect.

The Utah Division of Corporations and Commercial Code now provides the following information on registering a Domestic Non-Profit Corporation:

You may register a Domestic Non-Profit Corporation online or with our office in person, by mail, or fax. The online process is quick and easy and the business entity will be registered within 24 hours. If you wish to register your Domestic Non-Profit Corporation by form you may use the Application . The Application has instructions to help you fill out the Application .

A Non-Profit Corporation renews every year. You May renew a Domestic Non-Profit Corporation by renewing online. You will need to have the entity number and Renewal ID in order to renew online. If you do not have those items, you may contact our office.

### **FAQ: Can we accept donations prior to receiving the exempt designation from the IRS and the state income exemption?**

Tax exempt status is retroactive to the date of incorporation (up to 27 months), so donations given prior to receipt of the determination letter may be exempt. Because nonprofits should take special care of their donors, be aware of the window of time in which the status is retroactive. Many donors and grant-making organizations have requirements that stipulate that the organization must have tax exempt status before applying for donations or grants.

### **FAQ: What kind of information do we need to provide to our donors to comply with IRS standards?**

A charitable organization must give a donor a disclosure statement for quid pro quo contributions greater than \$75. A quid pro quo contribution is a payment a donor makes to a charity that is made partly as a contribution and partly for goods or services. The receipt must state the value of the gift, net of received goods or services. (To illustrate, a donor gives \$100 and receives two complimentary tickets that are valued at \$40 each. The charity must disclose that \$80 in goods or services were received). You should provide written receipts for all donations to the organization. If no goods or services are received for the services, the receipt should disclose that, “No goods or services were given in return for this donation.” For any single gift of \$250 or more, a taxpayer must have a written acknowledgement from the charitable nonprofit organization to take a tax deduction.



## **Annual Filing Requirements**

There are a wide variety of annual filings that nonprofits may be required to adhere to, this list is not meant to be all inclusive and nonprofits are advised to seek legal counsel and to speak with financial experts.

## Annual Filing Requirements

- File IRS Form 990, using Filing Thresholds to determine which form to complete, and using the current instructions for completing the Form 990 from the IRS
- Update Utah State Tax Commission when address and officer information changes
- Utah Department of Commerce –
  - Division of Corporations and Commercial Code Annual Reporting and Renewal (a reminder post card is mailed to the nonprofits Registered Agent)

### Notes about changes to Utah Department of Commerce Requirements

- Effective May 1, 2024, charitable organizations are no longer required to submit an annual registration with the Utah Division of Consumer Protection.
- Beginning January 1, 2025, certain charities will be required to upload their most recent IRS Form 990 with the Utah Division of Corporations and Commercial Code as part of the corporation's filing process. More information will be available on the Utah Department of Commerce Division of Consumer Protection website.
- Lieutenant Governor's Entity Registration
- State of Utah's Auditor Filing Requirements

## **Additional Resources and Websites**

## Additional Resources and Websites

### Helpful Websites

- [Utah Nonprofits Association - www.utahnonprofits.org](http://www.utahnonprofits.org)
- [National Council of Nonprofits - https://www.councilofnonprofits.org](https://www.councilofnonprofits.org)
- [Utah Department of Commerce website](#)
- [Reserve Business Name](#)
- [Utah Charitable Solicitations Permit](#)
- [Utah State Tax Commission's Form TC-160](#)
- [Utah State Tax Commission's Form TC-161](#)

### IRS

- [IRS website for reinstating tax exempt status.](#)
- [See pages 23 and 24 of IRS publication 557 for more details on the calculation of gross receipts and filing requirements](#)
- [Articles of Amendment to Articles of Incorporation \(Non-Profit\) – State of Utah Department of Commerce, Division of Corporations and Commercial Code](#)
- [IRS Forms and Publications](#)
- [Apply and get E.I.N. instantly online](#)
- [IRS Publication 557 provides detailed information about Tax-Exempt Status](#)
- [The IRS website provides detailed information on nonprofits](#)
- [IRS website for reinstating tax exempt status](#)
- [About Form SS-4, Application for Employer Identification Number \(EIN\)](#)
- [Instructions for Form 1023](#)
- [About Form 1023, Application for Recognition of Exemption Under Section 501\(c\)\(3\) of the Internal Revenue Code](#)
- [IRS Publication 557 Tax-Exempt Status for Organization](#)

- [IRS Sample Conflict of Interest](#)
- [Utah Department of Commerce templates](#)
- [Measuring Lobbying Activity: Expenditure Test](#)
- The Tax Identification Number (T.I.N.). The T.I.N. number (sometimes called an EIN or Employer Identification Number) comes from the IRS and is obtained by applying for an Employer Identification Number using the [Form SS-4](#).

### **Additional Resources**

- [Federal trademark database](#)
- [Taking the 501\(h\) election](#)

### Tax on Unrelated Business Income of Exempt Organizations

The IRS grants exemption from the payment of income tax on income directly related to the purpose of the organization. However, if an exempt organization regularly carries on a trade or business that is not substantially related to its exempt purpose, that income may be taxed.

Because unrelated business income is often made through sale of incidental items or through activities not related to the organization, the income may be taxed. For example, churches which host bazaars where they sell used clothing, cakes or other goods, may be subject to IRS taxes because the items being sold do not substantially relate to the activity and focus of the church. Another example may be a café or gift shop located in a museum where the goods and goodies sold do not directly correlate to the mission of the museum.

To be considered unrelated business income, the product or service in question must satisfy all three of the following tests:

- The income is derived from a trade or business.
- The trade or business is a regular activity, and
- The trade or business is not substantially related to the organization's exempt purpose.

Unrelated Business Income Tax provides for some exceptions, including passive income such as interest payments, royalties, annuities, and certain rents. Exemptions, as with taxes, are determined by the IRS. [Review IRS Publication 598 for additional details.](#)

## **State and Federal Offices**

Utah Department of Commerce  
Division of Corporations  
Heber Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
(801) 530-6701  
<http://www.commerce.utah.gov>

Utah State Tax Commission  
210 North 1950 West  
Salt Lake City, UT 84134  
<http://tax.utah.gov/>

Internal Revenue Service  
324 25th Street  
Ogden, UT 84401

Refer to the website for current forms. Send forms to appropriate offices as instructed on individual forms.

<http://www.irs.gov>