

FREE

Urban awareness

37 Questions & Answers:
About Non-Profit Organizations & 501C3 Status

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Questions and Answers

1. **How do I become tax exempt?**
 - a. It is a 2-Step process:
 - i. 1) You must INCORPORATE. Preferably, in your home state.
 - ii. 2) Upon incorporating, you must prepare and file the 20-page IRS Form 1023 and related form with the IRS accompanied by the appropriate filing fees. (The IRS estimates this form should take the first time applicant approximately 12-20 hours to complete)

2. **WHAT ARE THE REQUIREMENTS FOR 501(C)(3) TAX EXEMPT?**
 - a. NOTE: A check for either \$150.00 or \$500.00 must be made payable to the IRS. If you receive or expect to receive monies from any source totaling in excess of \$10,000.00, you will be required to pay the \$500.00 filing fee.
 - b. You must be incorporated as a nonprofit corporation.
 - c. You must adopt bylaws for your corporation.
 - d. You must elect a Board of Directors and elect Officers. We suggest you elect 3 directors who are unrelated by blood or marriage. Also, directors and officers may be the same 3 people.
 - e. You must obtain an employer identification number.
 - f. Your organization must be organized and operated for a charitable, literary, scientific, religious or educational purpose or in furtherance of amateur athletics.
 - g. Your organization may not be operated for the private financial benefit of any one person or for the benefit of a small class of persons.
 - h. You must NOT engage in lobbying for political campaigns or similar political activity. Even if you become tax exempt under Section 501c3 of the Internal Revenue Code, you may still have to comply with your state law to be considered tax exempt under state law.

3. **What is a 501(c)(3) public charity?**
 - a. A 501(c)(3) public charity is an organization which has (1) been organized under state law, (2) which is operated in furtherance of a 501(c)(3) purpose (i.e. Charitable, religious, educational, scientific, etc), (3) it benefits an unidentified charitable class of people (i.e. Those who suffer from AID's), (4) its activities are not political in nature and (5) its support, one-third of which, must come from the general public. A 501(c)(3) purpose includes, but is not limited to, educational, religious, scientific, medical and charitable purposes.

4. **How do I form a 501(c)(3) public charity?**
 - a. First, at the very minimum, you must form a non profit corporation in your home state. Then, your organization must adopt bylaws and obtain an employer identification number. Upon completing this, you must then prepare and submit an application to the IRS to request for it to approve your organization as exempt under Internal Revenue Code Section 501(c)(3). Generally speaking, the process from start to finish may take anywhere between 3-6 months if you have done things properly and are diligent in your paperwork.

5. **What is a "private foundation"?**
 - a. Firstly, most people forming a private foundation will prefer to form a 501(c)(3) public charity mainly because the benefits are greater. Specifically, the main difference is a person donating money to a 501(c)(3) public charity can donate up to 50% of their adjusted gross income. With a private foundation, a person donating money can only do so up to 30% of their adjusted gross income.
 - b. The dividing line between being deemed a 501(c)(3) public charity or a private foundation is based upon the sources of support of the foundation. In other words, if the foundation's sources of support are from a relatively few number of people then the sources of support will cause the IRS to deem the foundation a private foundation. If the sources of support are large enough, the IRS will deem the foundation to be a 501(c)(3).

6. **What do you mean, “other types of tax exempt organizations”?**
 - a. When we refer to “other types of tax exempt organizations” we are referring to certain organizations, such as business leagues, trade groups, social clubs and firefighter associations who qualify for tax exempt status but who do not qualify to be able to receive donations from donors which would be deemed a “charitable contribution” and a deduction to the individual tax payer as such. There are many types of classifications for an organization, which is not exempt under section 501(c)(3) of the internal revenue code including, but not limited to, 501(c)(4), 501(c)(5), 501(c)(6) and 501(c)(7). If you believe that your organization may qualify for exemption under any of these codes, please contact us toll free at 1-866-975-URBA or visit <http://www.urbanawarenessusa.org/>

7. **How long does the process take?**
 - a. Unless you choose to expedite, it takes approximately 4 weeks to incorporate. Additionally, the IRS takes approximately 3-5 months to be examine and approve a 501(c)(3) application. Keep in mind that each 501(c)(3) application is RANDOMLY ASSIGNED to an IRS agent for examination. Each IRS agent has their own distinct work load and ability to fully review and approve an application. Thus, there is no way to know with exact precision the precise time that it will take to approve an application. As a result of this, we HIGHLY SUGGEST that you immediately incorporate in order to expedite this process. In the interim, as we are finishing your incorporation documents, because of the time lag, you may provide us with any remaining pieces of information that we may need to complete your 501(c)(3) application including, but not limited to, selection of your board members, preparation of your financial budget and further refinement of your activities and programs.

8. **Is it hard to be approved as a 501(c)(3) public charity, private foundation or other type of tax exempt organization?**
 - a. A: Yes, and even more so if you have never done it before. Urban Awareness USA was formed to help people navigate the maze of confusion in preparing the necessary paperwork. The IRS estimates that a first-time preparor of a 501(c)(3) application may take in excess of 30 hours to complete it.

9. **How many board members do we need to have on our board?**
 - a. Generally, the initial directors should be the founders and/ or persons who are going to be overseeing the operation of the entity. In most states, ONE (1) PERSON may serve as the sole director for incorporation purposes. However, in furtherance of submitting a 501(c)(3) application or other type of tax exempt application, the IRS may require (almost always requires) three (3) distinct individuals to serve on the board of directors. Also, keep in mind that you may change your board from time to time pursuant to your corporations bylaws and/or applicable law. Also, keep in mind that your board may be compensated, per applicable law, in a reasonable amount. Generally, though, the IRS prefers directors who are volunteers. In the event that initially you only have one (1) director, do not worry as the selection of the additional directors needed may take place at a later time.

10. **Can the officers of the non-profit corporation be the same as the board of directors?**
 - a. Yes. Corporate Officers run the day-to-day operations of the corporation and are elected by the Board of Directors. Generally one person may serve as all of the officers of a corporation; however, if you are forming a nonprofit corporation we suggest that you have three distinct persons acting as officers of your corporation. You may have the same individuals who serve on your board of directors who also serve in the capacity as an officer of your corporation. For example, you may have John Doe serve as a director/president and Jane Smith may serve as director/treasurer.

11. **What are the titles of officers?**
 - a. Basic titles include: President, Secretary and Treasurer. The aforementioned titles comprise the minimal amount of officers that is generally acceptable to serve in a fiduciary capacity on behalf of your corporation.

12. **How many officers do we need?**
 - a. Three (3), unrelated by blood or marriage. Keep in mind that officers may be compensated pursuant to applicable law. However, in no event may compensation constitute an unreasonable amount. For example, if an organization receives in total \$100,000.00 in its first year, and an officer receives a salary in excess of \$50,000.00, this would more than likely be deemed by the IRS as an unreasonable salary. Also, keep in mind that a non-profit corporation must report its payroll as any other organization just as any other organization would be required to.

13. **Can the officers be the same people?**
 - a. Most likely, no. However, if an organization has directors who are unrelated by blood or marriage in the amount of at least three (3), then the IRS has on occasion approved an organization as 501(c)(3) even though it has only one (1) individual serving as all the officers of a corporation.

14. **Do we need to prepare a mission statement?**
 - a. Legally NO. However, you may find it helpful for your internal operations.

15. **Do we need to prepare a budget for our operations?**
 - a. Absolutely. This is necessary and required to be reviewed in advance by the IRS. In applying to the IRS for 501(c)(3) exemption, each organization must submit a budget which includes a statement of its revenue and expenses, and a balance sheet which details the organizations first three (3) years of operation. Because many of you are newly created organizations, you will not know with exact certitude your expected gross receipts and expenses. However, you are not required to know in advance these items of income and expense. Rather, the IRS requires that you make GOOD FAITH estimates of your anticipated income and expenses. In making these estimations, you must be thoughtful, practical and reasonable.

16. **As far being deemed tax exempt, do we need to do anything at the state or local level?**
 - a. Most states automatically deem any recognized 501(c)(3) public charity as tax exempt under state law as well. For a list of states, and their state tax-exempt guidelines, visit <http://www.urbanawarenessusa.org/>

17. **What state should I incorporate in?**
 - a. Generally speaking, you should incorporate in the state in which you conduct your business in. However, if you conduct your business in more than one state, you might consider the various tax advantages of each state you do business in to determine which state is right for you. If you do not incorporate in your home state of business, you may still be required to qualify as a foreign corporation in your home state which would mean double the incorporation fees and double the paperwork. Still worse, you will be required to pay state taxes in your home state because that's where you are doing business. Give us a call we would be more than happy to answer any questions you have about incorporation. Toll Free at 1-866-975-URBA or visit <http://www.urbanawarenessusa.org/>

18. **If am self-employed, how will incorporating my business benefit me?**
 - a. It benefits you in several ways:
 - i. (1) As a self employed person you have to pay self employment taxes at the federal level of 15% in addition to your personal income taxes. With an S-Corporation, you can cut your self employment taxes down because you will only have to pay taxes on money that is paid to you out of the corporate bank account. For instance, assume you are self-employed as a sole proprietor and you make \$100,000.00 this year. You would have to pay to the IRS \$15,000 or 15% of this \$100,000 as self employment taxes, in addition, to any other monies you owe the IRS for personal income taxes. If you form a S-Corporation, you can pay yourself a salary as an employee, of say, \$60,000/ year, and the \$60,000 would be taxed at 15% and the remaining \$40,000.00 would not be taxed because it was not received by you as an employee but would stay in the corporate bank

account. You would only be required to pay the IRS \$9,000 rather than the \$15,000 and you would realize a tax saving of \$6,000.

- ii. (2) In addition to this saving, as a sole proprietor, you can only deduct a portion of insurance for medical and dental premiums. By incorporating, you can deduct 100% of these premiums so long as all employees of the corporation receive these benefits equally and without discrimination. If you are a one-person corporation, that solves that problem.
 - iii. (3) Incorporation will protect you from lawsuits. If you get sued, your personally assets will be protected from attachment and the debts of the corporation will be owed by the corporation so long as you maintain you annual meetings and operate the corporation in legitimate fashion observing corporate formalities as required by state law.
 - iv. (4)By incorporating, you can use a corporation to build and repair your credit. For those who have problems with their credit, incorporating and obtaining a corporate credit can be a wonderful way of creating new credit and demonstrating credit worthiness so that you may buy your first house.
- b. Urban Awareness USA, suggests that you consult with your attorney to make sure incorporating is the best alternative for you. If you would like Urban Awareness USA to help you with this process please call 1-866-975-URBA or visit <http://www.urbanawarenessusa.org/>

19. *Is my Corporate Name Available?*

- a. Your attorney can perform a non-binding name check for name availability within the state of incorporation. The name check is normally preformed at no additional charge. However, please remember that the final determination is made by the state officials; thus, never rely on a corporate name check until AFTER you have received a copy of your filed Articles of Incorporation, stamped with the state's approval.
- b. Most jurisdictions allow you to telephone in and ask whether the corporate name is available, or whether it is in use by another company. Many jurisdictions are updating their systems and now allow you to check for your corporate name via the internet. Some jurisdictions will provide a name check over the telephone for a charge of between \$15 to \$20. Still some, however, will not provide name checks over the telephone and require you to physically enter the state office and complete a form with the requisite information before the state will perform a name check.

20. *How long is the incorporation process?*

- a. Processing times for incorporating a company vary amongst the different states and change constantly depending on the workload at the state office. Please ask one of our representatives for our most current approximation of the processing time for Articles of Incorporation within your state of incorporation.

21. *What is a Registered Agent?*

- a. Almost ALL jurisdictions require that the corporation designate a registered agent for service of process. However, in most cases, anyone who has a street address (NO PO BOXES) within the state of incorporation may act as a registered agent for the corporation. We can help select a registered agent service for you if you are in need of such services.

22. *What are Articles of Incorporation?*

- a. A Corporation's "Articles of Incorporation" is the main filing document, which begins the corporation's existence under state law. Once filed, the corporation comes into existence. The level of complexity for a corporation's Articles of Incorporation can range from very simple to extremely complex. Generally, most jurisdictions require Articles of incorporation to contain, at a minimum, information about the Corporate Name, the Registered Agent, and the Corporation's business address. Requirements vary by state.

23. What are Bylaws?

- a. Bylaws serve as the internal operating document for the corporation. Generally, Bylaws detail the responsibilities, rights, and duties of directors, shareholders and officers. Currently states generally do not require that Bylaws be filed.

24. What is a Corporate Officer?

- a. Most forms allow you to name up to 6 officers for your corporation. While most jurisdictions allow the same person to act in all capacities, that person has different responsibilities depending on the capacity in which he or she is acting.

REQUIRED OFFICERS President Treasurer Secretary	SECONDARY OFFICER Vice President
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- b. Although most jurisdictions allow one person to serve in all three capacities, the person's responsibility and authority changes through the different officerships the person assumes. For example, the President is typically responsible for entering into contracts on behalf of the corporation, the Treasurer is responsible for maintaining and accounting for corporate funds, and the Secretary is responsible for observing corporate formalities and maintaining corporate records. In addition to these required officer positions, a corporation may also have vice presidents or other officers.
- c. Typically, the authority and responsibilities of each officer is described in the corporate bylaws and may be further defined by an employment contract or job description.
- d. **The President.** The President has the overall executive responsibility for the management of the corporation and is directly responsible for carrying out the orders of the board of directors. He or she is usually elected by the board of directors.
- e. **The Treasurer.** The Treasurer is the chief financial officer of the corporation and is responsible for controlling and recording its finances and maintaining corporate bank accounts. Actual fiscal policy of the corporation may rest with the Board of Directors and be largely controlled by the president on a day-to-day basis.
- f. **The Secretary.** The Secretary is typically responsible for maintaining the corporate records.

25. What is a Corporate Director?

- a. The Board of Directors is essentially the management body for the corporation.
- b. Responsibilities of the Board of Directors include establishing all business policies and approving major contracts and undertakings. In addition, the Board may also elect the President. Ordinary business practices of the corporation are carried out by the Officers and employees under the directives and supervision of these Directors.
- c. The Directors must act collectively for their votes and decisions to be valid. That's why Directors may only act at a Board of Directors meeting. This, however, requires certain formalities. One such formality is that the Directors must all be notified of a forthcoming meeting in a prescribed manner, although this can be waived or provided for in the corporation's Articles of Incorporation or Bylaws.

- d. For a Directors' meeting to be valid, there must also be a Quorum of Directors present. A Quorum is usually a majority of the Directors then serving on the Board; however, the Bylaws may specify another minimum number or percentage.
- e. The Board of Directors must meet on a regular basis (monthly or quarterly), but in no case less than annually. These are the regular Board meetings. The Board may also call Special Meetings for matters that may arise between regular meetings. In addition, boards may call a special shareholders' meeting by adopting a resolution stating where and when the meeting is to be held and what business is to be transacted.
- f. The first meeting of the Board of Directors is important because the Bylaws, the Corporate Seal, Stock Certificates and Record Books are adopted.
- g. Board members, like officers, have a fiduciary duty to act in the best interests of the corporation and cannot put their own interests ahead of the corporation's. The Board must also act prudently and not negligently manage the affairs of the corporation. Finally, the Board must make certain that it properly exercises its authority in managing the corporation and does not abrogate its responsibilities to others.
- h. This means that the board must be very careful to document that each Board action was reasonable, lawful and in the best interests of the corporation. This is particularly true with matters involving compensation, dividends and dealings involving Officers, Directors and Stockholders. The record or Corporate Minutes of the meeting must include the arguments or statements to support the Board action and why must detail why the action was proper.

26. *Where can I get a Corporate Seal?*

- a. While many jurisdictions have abolished the requirement of maintaining a corporate seal, many corporations still prefer to maintain a corporate seal as a formality. Corporate seals range in price from \$8 (rubber stamp) to about \$75 (steel embosser). Please contact your local stationer to obtain a corporate seal. You'll need to know the name of your corporation and the date of incorporation before you can order it.

27. *What is a Federal Employer Identification Number?*

- a. If you plan on opening a bank account under your corporate name, most banks will require that your corporation have a Federal Employers Identification Number. Furthermore you may need this number to file your tax return.

28. *Does the corporation have to issue stock?*

- a. Shares of stock represent ownership of the corporation. Where no shares are issued, no individual owns the corporation. Thus, shares must be issued to those individuals who will own the corporation. While most states have created many exceptions and exemptions from registering a stock issuance with the State or with the SEC for most small businesses, it may be wise to contact the appropriate entity to determine whether you must file a notice of stock issuance on a state or Federal Level.

29. *What is Par Value?*

- a. A business corporation must sell shares of stock in order to capitalize the corporation, that is, provide the corporation with its own capital, separate from the money of its owners. This separation provides part of the support for shielding the shareholders from personal liability for the debts and obligations of the corporation.
- b. Shares of stock sold by the corporation represent proportionate ownership interests held by shareholders in the corporation. "Par value" is a dollar value assigned to shares of stock which is the minimum amount for which each share may be sold. There is no minimum or maximum value

that must be assigned. Shares may also have "no par value," which means that the Board of Directors will assign a value to the stock below which the shares cannot be issued.

- c. There is no minimum number of shares that must be authorized in the articles of incorporation. One or more shares may be authorized. However, the corporation may not sell more shares than it is authorized to issue and it must receive consideration in exchange for its shares.

30. Must I file a D.B.A.?

- a. Individuals and unincorporated entities that regularly conduct business using an assumed name (often referred to as a "d.b.a.") must file an assumed name certificate with the county clerk in each county in which business premises are maintained. If corporations, limited liability companies or limited partnerships (entities created by filing with the secretary of state) do business with a name that is different than the name set forth in the organizational documents, they must file assumed name certificates in the county or counties where the registered office and the principal office are located, and must also file with the secretary of state.

31. If I incorporate, will doing so prevent others from using my company name?

- a. Incorporating will not keep another business from using your name. Generally, every business must protect its own business name and the good will that it has acquired from the sale of its goods or services in a specific geographic area. Filing articles of incorporation only prevents the secretary of state from filing a document to create another corporation, limited liability company or limited partnership that has the same, a deceptively similar, or similar name as the entity already in existence.

32. Can I protect a trade name nationwide?

- a. There is no national registration of trade names. Generally, businesses, including corporations, protect their trade names by registering their trade name as a service mark or trademark if the trade name also functions as a service mark or trademark. Because of the legal complexities involved, we recommend that businesses obtain private counsel to get advice on how to protect a trade name in interstate commerce.

33. Can the same person be the shareholder, director and all officers of a corporation?

- a. While jurisdictions will vary in their requirements, most states require that there be at least one director and two officers, in a general, for-profit corporation. The required officers are President and Secretary. Most states allow one natural person to hold both offices and be the sole director of the corporation. Usually, that one person may also be the sole shareholder. A corporation may not be a director of another corporation.

34. Do I need to publish a notice of incorporation?

- a. While a few jurisdictions require publication of the corporate name to be published in a newspaper local to the county of the registered agent (Georgia, Arizona, Illinois, and Pennsylvania), most jurisdictions do not require publication unless an existing unincorporated business intends to incorporate without a change in its name; that business must then publish its intent to incorporate in the local newspaper for four consecutive weeks (in most jurisdictions).

35. What is the difference between a corporation and an LLC?

- a. Corporations are formed pursuant to state law and have shareholders, are managed by a board of directors, and the daily affairs are administered by officers. Similarly, a limited liability company (LLC) has members and may be managed by one or more managers. Most often, both entities must pay franchise taxes, but may have different federal tax liabilities.
- b. Generally, most people form corporations or limited liability companies in order to shield the shareholders or members and officers or managers from personal liability for the debts and obligations of the entity. There may also be various tax advantages to forming these entities which may not be available for sole proprietorships and general partnerships.

- c. We cannot provide information as to whether a person should incorporate or form a limited liability company or a partnership. If you are contemplating forming any of these entities you should consult with private counsel regarding your individual fact situation.

36. What is a nonprofit corporation?

- a. This is a corporation which is formed with the purpose of benefiting the public in some religious, scientific, educational or charitable way. Because of this charitable purpose, most jurisdictions do not require these corporations to pay income taxes on monies it earns. In addition, nonprofit corporations may achieve tax exempt status for charitable contributions by obtaining what is known as 501(c)(3) status. Please consult your attorney or accountant for more specifics and advice on whether this entity is the one for you to form.

37. What is the difference between an S-Corporation and a C-Corporation and Limited Liability Company as far tax ramifications?

- a. If you do not make an election with the Internal Revenue Service (FORM 2553) or with the appropriate State Agency, you will be considered to be a C-Corporation. A C-Corporation will be subject to double taxation. It will be taxed one time at the corporate level and one time when distributions or dividends are given to shareholders. For example, assume a corporation earns \$100,000 for the first year. The corporation must pay taxes at its own tax rate. Assume the corporation distributes the \$100,000 to the sole shareholder of the company. This shareholder will have to pay taxes on this dividend as well; therefore there is double taxation.
- b. If you prepare and file Form 2553, you will be an S-Corporation. A S-Corporation is subject to single taxation and the profits earned by the S-Corporation are taxable to the shareholders according to the individual income tax brackets and their ownership interest in the company. In other words, a 100% shareholder will report the full gain on his/ her individual income tax returns. If you are 50% shareholder and the corporation earns \$100,000 for the first year, that 50% will report only \$50,000 as income earned for this year.
- c. A limited liability company is taxed similarly to an S-Corporation in that there is only single taxation. The difference is that, generally, an LLC files a partnership tax return whereas an S-Corporation must file a corporate tax return. To determine which entity to form consult with an attorney or accountant. Seton & Associates is simply a document preparation service.