

# **AFFILIATE ORGANIZATIONS**

## **Business, Legal, & Accounting Considerations**

Debbi R. Holmes Stockstill  
Attorney at Law  
Certified Public Accountant

# Determine Business Structure

## MAIN CONCERNS

- ▣ Ease and cost of formation
- ▣ Ownership
- ▣ Limitation of personal liability
- ▣ Taxation
- ▣ Ease of administration

## WHO CAN BE TAX EXEMPT?

- ▣ Charitable Organizations.
- ▣ Churches and Religious Organizations.
- ▣ Private Foundations.
- ▣ Political Organizations.
- ▣ Other Nonprofits.

**State law governs non-profit status; Federal law governs tax-exempt status**

# Business Entity Comparison

Business structure	Ownership	Liability	Taxes
Sole proprietorship	One person	Unlimited personal liability	Personal tax only
Partnerships	Two or more people	Unlimited personal liability unless structured as a limited partnership	Self-employment tax (except for limited partners) Personal tax
Limited liability company (LLC)	One or more people	Owners are not personally liable	Self-employment tax Personal tax or corporate tax
Corporation - C corp	One or more people	Owners are not personally liable	Corporate tax
Corporation - S corp	One or more people, but no more than 100, and all must be U.S. citizens	Owners are not personally liable	Personal tax
Corporation - Nonprofit	One or more people	Owners are not personally liable	Tax-exempt, but corporate profits can't be distributed

# BUSINESS NAME

- ▣ Business name availability search.
- ▣ Register
  - Entity Name – protects at State level
  - Trademark – protects at Federal level
  - DBA – no legal protection, but may be required
  - Domain Name – protects your business website address

# START UP FORMS

- ▣ Articles of Incorporation (REQUIRED and filed with the State)
  - Certificate of Incorporation issued – corporate existence BEGINS
- ▣ Bylaws (not filed with the State or Federal)
- ▣ Organizational Incorporator/ Board of Directors Meeting Minutes
- ▣ Tax Identification Numbers (Federal/State)
- ▣ Tax Exempt Application (Federal)
- ▣ Licenses & Permits (State)
  - Sales Tax
  - Gaming/Raffles

# ARTICLES OF INCORPORATION

- ▣ Name of company
- ▣ Purpose(s) of the organization (required to apply for IRS Federal charitable tax exemption)
- ▣ Period of existence
- ▣ Members
- ▣ Principal Office

# ARTICLES OF INCORPORATION (continued)

- ▣ Registered Agent
- ▣ Incorporators
- ▣ Directors
- ▣ How Directors are Elected/ Appointed
- ▣ Distribution of Assets on Dissolution  
(required to apply for IRS Federal  
charitable tax exemption)
- ▣ Other Provisions for Internal Affair  
Regulation

# BYLAWS

- ▣ Bylaws are NOT generally filed with the State.
- ▣ Bylaws are the internal governance documents of a corporation. They are rules established for the regulation or management of the affairs of the corporation. They define how key business decisions are made, as well as officer and members' duties, powers, and responsibilities.

**It is widely recommended to create Bylaws to protect yourself and your business, even if your state does not mandate it.**

# BYLAWS (continued)

## PROVISIONS:

- ▣ Governing Structure
- ▣ The Role of Directors
- ▣ Officers in a Nonprofit
- ▣ Voting Rules
- ▣ Committee Formation

**The bylaws must include how amendments are made and whether it is through the board, the membership, or by getting approval from a third party.**

# ORGANIZATIONAL/BOARD OF DIRECTORS MEETING

- Ratify Pre-formation Acts.
- Mission Statement.
- Set up annual accounting period & tax year end.
- Cash or accrual accounting.
- Initial Budget.
- Planned Activities that accomplish mission statement.
- Approve membership, set membership dues and payment dates.
- Authorize and establish board and committees.
- Appoint officers.
- Approve Bylaws.
- Decide on tax exempt status and when it commences.
- Approval for first transactions, like opening bank account.

# TAX IDENTIFICATION NUMBER (EIN – Employer Identification Number)

## FEDERAL

- ▣ Application is a free service of the IRS
- ▣ Can apply online (preferred), by fax or by mail (Form SS-4).
- ▣ All applications must disclose the name and Taxpayer Identification Number (SSN, ITIN, or EIN) of the true principal officer.

# TAX IDENTIFICATION NUMBER (EIN – Employer Identification Number – Continued)

## STATE

- ▣ Ties directly to whether your business must pay state and/or local taxes.
- ▣ To know whether you need a state tax ID, research and understand your state's laws regarding income taxes and employment taxes, the two most common forms of state taxes for small businesses.
- ▣ The process to get a state tax ID number is similar to getting a federal tax ID number, but it will vary by state. You'll have to check with your state government for specific steps.

# TAX EXEMPT APPLICATION

## FEDERAL

### Requirements for Tax-Exempt Status Under Section 501(c)(3)

- ▣ An organization must be organized and operated exclusively for one or more exempt purposes.
- ▣ Must be operated to further one or more of the exempt purposes stated in its organizing document. Certain other activities are prohibited or restricted.

# TAX EXEMPT APPLICATION (continued)

## Requirements for Tax-Exempt Status Under Section 501(c)(3) - continued

- ▣ You can find information about eligibility to file Form 1023 or Form 1023-EZ at [IRS.gov/Charities](https://www.irs.gov/Charities).
- ▣ Applications must be completed and submitted electronically (along with the user fee) using [Pay.gov](https://www.pay.gov).
  - As of 11/14/2021, Form 1023-EZ user fee is \$275.
- ▣ **State Registration Requirements**
- ▣ IRS will issue a Determination Letter recognizing you (or not) as a tax exempt organization .

# Small to Mid-Size Tax Exempt Organization Workshop

<https://www.stayexempt.irs.gov/home/resource-library/virtual-small-mid-size-tax-exempt-organization-workshop>

# PROVE IT!

When the tax man is snooping why you wrote off the RV...



# B U D G E T I N G

## Financial Projection Worksheet For IRS Form 1023

	2022	2023	2024	
<b>Support &amp; Revenue Plus Increase:</b>	<b>0%</b>	<b>10%</b>	<b>10%</b>	<b>Monthly</b>
Online / PayPal / Credit Cards	\$0	\$0	\$0	\$0
Checks	\$0	\$0	\$0	\$0
Cash Donations	\$0	\$0	\$0	\$0
Grants	\$0	\$0	\$0	\$0
In kind Donations	\$0	\$0	\$0	\$0
Equipment Donations	\$0	\$0	\$0	\$0
Sponsorships	\$0	\$0	\$0	\$0
Member Dues	\$0	\$0	\$0	\$0
Fees for Services	\$0	\$0	\$0	\$0
Fundraisers	\$0	\$0	\$0	\$0
Sales (Website Merchandise, etc)	\$0	\$0	\$0	\$0
Other - (Explain If Any)	\$0	\$0	\$0	\$0
<b>Total:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**Note:** You should edit the years (in green) and percentages (in blue) to your requirements, but don't start with your current tax year, start with the next year.

	2022	2023	2024	
<b>Internal &amp; Program Expenses Plus Increase:</b>	<b>0%</b>	<b>5%</b>	<b>5%</b>	<b>Monthly</b>
Funds Spent On Actual Programs	\$0	\$0	\$0	\$0
Accounting / Bookkeeping	\$0	\$0	\$0	\$0
Fundraising Expenses	\$0	\$0	\$0	\$0
Insurance	\$0	\$0	\$0	\$0
Legal Fees	\$0	\$0	\$0	\$0
Postage	\$0	\$0	\$0	\$0
Printing	\$0	\$0	\$0	\$0
Rent (Facilities)	\$0	\$0	\$0	\$0
Rent (vehicles)	\$0	\$0	\$0	\$0
Employee Salaries	\$0	\$0	\$0	\$0
Office Supplies & Software	\$0	\$0	\$0	\$0
Tax	\$0	\$0	\$0	\$0
Telephone	\$0	\$0	\$0	\$0
Travel	\$0	\$0	\$0	\$0
Fuel	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0
Licensing Fees	\$0	\$0	\$0	\$0
Meals	\$0	\$0	\$0	\$0
Professional Fees (Explain If Any)	\$0	\$0	\$0	\$0
Legislation Influence	\$0	\$0	\$0	\$0
Training	\$0	\$0	\$0	\$0
Other (Explain If Any)	\$0	\$0	\$0	\$0
<b>Total:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Revenue Minus Expenses:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	

Percentage of Internal Expenses:	#DIV/0!	#DIV/0!	#DIV/0!	(Decreasing)
Percentage of Funds Spent on Actual Programs:	#DIV/0!	#DIV/0!	#DIV/0!	(Increasing)

# Financial Statements

	<u>Nonprofits</u>	<u>For-profit corporations</u>
Main financial statements required by U.S. generally accepted accounting principles (US GAAP):	<b>Statement of Financial Position</b> <b>Statement of Activities</b> <b>Statement of Functional Expenses (by function and nature)</b> <b>Statement of Cash Flows</b> <b>Notes to Financial Statements</b>	Balance Sheet  Income Statement or Statement of Operations   Statement of Cash Flows  Statement of Stockholders' Equity  Notes to Financial Statements

# Statement of Financial Position

Home4U  
**Statement of Financial Position**  
March 31, 2020

## ASSETS

Cash & cash equivalents	\$ 5,950
Security deposits	1,400
Furniture	8,300
Total assets	<u><u>\$15,650</u></u>

## LIABILITIES & NET ASSETS

Accrued expenses	<u>\$ 300</u>
Net assets	
Without donor restrictions	<u>15,350</u>
Total net assets	<u>15,350</u>
Total liabilities & net assets	<u><u>\$15,650</u></u>

# Statement of Activities

Home4U  
**Statement of Activities**  
 For the *Three Months* Ended March 31, 2020

	Without Donor Restrictions	With Donor Restrictions	Total
<b>Revenues</b>			
Contributions	\$10,000	\$ 8,000	\$18,000
Net assets released from restrictions	<u>8,000</u>	<u>(8,000)</u>	-
Total revenues	<u>18,000</u>	<u>-</u>	<u>\$18,000</u>
<b>Expenses</b>			
Program expenses	-	-	-
Gen & admin expenses	2,650	-	2,650
Fundraising expenses	<u>-</u>	<u>-</u>	<u>-</u>
Total expenses	<u>2,650</u>	<u>-</u>	<u>2,650</u>
<b>Change in net assets</b>	15,350	-	15,350
+ Net assets - beginning	-	-	-
= Net assets - ending	<u>\$15,350</u>	<u>\$ -</u>	<u>\$15,350</u>

Again, the ending net asset amounts must agree with the net asset amounts reported on the Statement of Financial Position dated March 31, 2020.

# Statement of Functional Expenses

Home4U  
**Statement of Functional Expenses**  
For the Year 2020

	Program #1	Program #2	Management & General	Fundraising	Total
Salaries and benefits	\$45,000	\$93,000	\$30,000	\$10,000	\$178,000
Rent and utilities	12,000	20,000	5,000	5,000	42,000
Printing and supplies	6,000	10,000	3,000	5,000	24,000
Depreciation	5,000	8,000	2,000	1,000	16,000
Total	\$68,000	\$131,000	\$40,000	\$21,000	\$260,000

 = NATURE     = FUNCTION

# Statement of Cash Flows

## Sample Corporation Statement of Cash Flows Year Ended December 31, 2020

Cash flows from operating activities	\$	xxx
Cash flows from investing activities		xxx
Cash flows from financing activities		<u>xxx</u>
Net increase (decrease) in cash		xxx
Cash at the beginning of the year		<u>xxx</u>
Cash at the end of the year	\$	<u><u>xxx</u></u>

See notes to the financial statements.

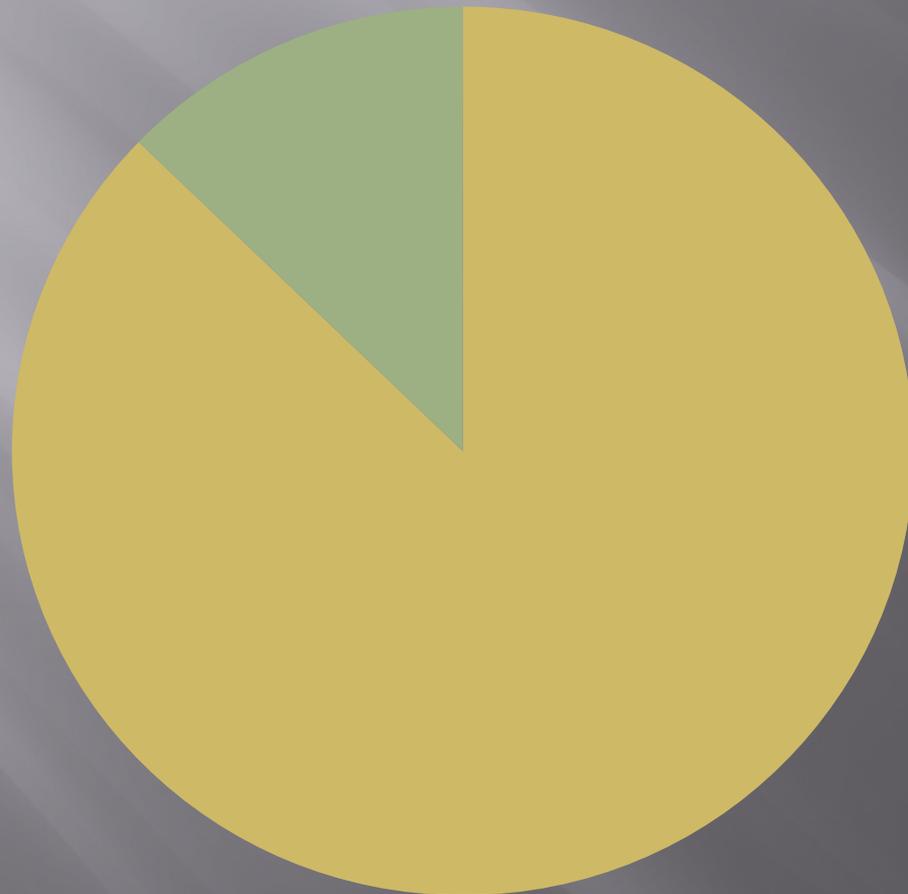
# Notes and More!

- ▣ Notes to Financial Statements – required part of the financial statements
- ▣ Comparative Financial Statements
- ▣ Audited Financial Statements



# Remember To File Annual Reports!!

## Annual Report



■ Those Who Forget to File

■ Those Who Forget to File, But in Green

# Conflict of Interest

- ▣ Forms of Conflict of Interest
  - Related Party
  - Dual Capacity Individuals
  - Business Dealings with Board member for-profit company
  - Property Ownership

## QUORUM

The minimum number of UNRELATED board members needed to count as an official meeting

# Insurance

- ▣ **General Liability Insurance**
- ▣ **Directors & Officers Liability Insurance**
- ▣ **Health Insurance**
- ▣ **COBRA and Continuing Coverage for Health Insurance**
- ▣ **Fidelity Bond**
- ▣ **Property Insurance**

# Worker Status

**EMPLOYEE**

**VS.**

**INDEPENDENT CONTRACTOR**

# Equal Opportunity

The purpose of an Equal Opportunity Employer statement is to prevent hiring managers or human resources from selecting candidates based on their personal biases or preferences. It aims to support hiring practices where candidates are selected for roles according to their suitability for the business needs.

# Labor Laws

- ▣ South Dakota Department of Labor requires the following Labor and Employment documents be posted in the workplace. This information is provided as a public service. Many other state and federal agencies may also require display of specific documents in the workplace.
  - Unemployment posting
  - Safety on the Job posting

# Other

- ▣ Intellectual Property Laws
  - Get permission to use photos, documents, etc from others outside of the organization.
  - Employment or independent contractor agreements
- ▣ Privacy Policy
- ▣ Website – limit liability and disclaim warranties

ANY QUESTIONS??

