


OBTAINING 501(c)(3) STATUS FOR YOUR BOOSTER CLUB

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Steps to Form a PA Nonprofit Corporation

- Identify charitable purpose (must fall under the IRS permitted purposes)
- Identify type of entity and structure
 - Members, non-members, voting rights
- Check name for availability
- Prepare and file articles or certificate of formation with secretary of state
 - Include IRS required purpose language, restriction on private benefit, restriction on lobbying, disposition of charitable purpose funds at dissolution
- Identify initial governing board members
- Prepare bylaws and policies
- Identify officers, prepare organizational minutes, have organizational meeting, adopt bylaws and policies

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Steps to Form a PA Nonprofit Corporation

- Obtain EIN from IRS
- Advertise formation in one general circulation newspaper and one legal journal
- Prepare and file 1023 application for Recognition of Exemption for tax-exempt 501(c)(3) status
- Receive IRS determination letter granting tax-exempt status
- If necessary, register to solicit contributions with PA Bureau of Charitable Organizations
- If applicable file state and local applications for sales and use tax exemption and real estate tax exemption
- Maintain ongoing compliance for tax exemption

Definition of LEGAL ENTITY

A lawful or legally standing association, corporation, partnership, proprietorship, trust, or individual. Has legal capacity to:

ENTER INTO
AGREEMENTS OR
CONTRACTS

ASSUME
OBLIGATIONS

INCUR AND PAY
DEBTS

SUE AND BE SUED
IN ITS OWN RIGHT,
AND

TO BE
ACCOUNTABLE FOR
ILLEGAL ACTIVITIES

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Definition of NON-PROFIT STATUS

Nonprofit organizations are institutions that conduct their affairs for the purpose of assisting other individuals, groups, or causes rather than garnering profits for themselves.

Nonprofit groups have no shareholders; do not distribute profits in a way that benefits members, directors, or other individuals in their private capacity; and (often) receive exemption from various taxes in recognition of their contributions to bettering the general social fabric of the community.

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Definition of TAX EXEMPT

- NOT SUBJECT OR LIABLE TO TAXATION
- A NON-PROFIT ENTITY CAN FAIL TO QUALIFY FOR TAX

EXEMPT STATUS

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Why Formalize Legal Entity Status?

Tax exemption and compliance

Continuity, Structure, Purpose, Management

Power to Contract, Sue or be Sued

Eligible for EIN, bank account, insurance

Eligible for income tax exemption and donor donations qualify as tax deductible for the donor

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Why Formalize Legal Entity Status?

- Statutory limits on liability of members and directors
- Ability to apply for grants, corporate donations and other public or private allocations available only to IRS-recognized, 501(c)(3) organizations
- The public legitimacy of IRS recognition, donor confidence and increased giving
- An element of seeking possible exemption from state sales and property taxes
- An element of seeking possible discounts on US Postal bulk-mail rates and other services
- An element of county/municipal approvals for fundraising games-of-chance licenses
- For educational support organizations that provide scholarships to students, an element of eligibility for participation the Pennsylvania Opportunity Scholarship Tax Credit Program

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Attract Donors

The IRS provides that a person can deduct charitable contributions from federal income tax only if made to a qualified organization. Most large donors verify 501(c)(3) status before contributing.

- *In general, contributions to public charity organizations may be deducted up to 50 percent of adjusted gross income computed without regard to net operating loss carrybacks (limited to taxpayers that itemize deductions).
- For calendar years 2020 and 2021 The Coronavirus Aid, Relief and Economic Security (CARES) Act allowed individuals who do not itemize deductions to deduct up to \$300 (\$600 for married filing jointly) in charitable contributions, which option expired effective calendar year 2022 and is no longer available.

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Regulatory Compliance



IRS regulations require that organizations having \$5,000 or more per year in gross receipts averaged over a three-year period register with the IRS for tax exemption. PA requires registration by organizations having \$25,000 or more in gross receipts in any year, unless exempt.

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Liability Protections

PA statutes provide that members shall not be liable for a debt, obligation or liability of the corporation of any kind or for the acts of any member or representative of the corporation, and, **if adopted in the by-laws**, directors shall not be personally liable, as such, for monetary damages for any action taken unless:

- (1) the director has breached or failed to perform the duties of his office under this subchapter; and
- (2) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

(b) Exception.--Subsection (a) shall not apply to:

- (1) the responsibility or liability of a director pursuant to any criminal statute; or
- (2) the liability of a director for the payment of taxes pursuant to Federal, State or local law.

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Concerns

- If the charitable entity is not registered as tax-exempt at the federal and state level, how is the entity accounting for its revenue and what are the potential risks?
- Bank account records are associated with a taxpayer identification number (a social security number for individuals, and an employer identification number (EIN) for entities).
- Do not use personal account (individual SS#) or school EIN for the public charity's bank account.
- Risks of using inappropriate EIN include audit complications, and potential IRS interest/penalties for unreported revenue/taxes (or a lot of explaining and possibly retroactive application for 501(c)(3) status).
- Any organization (other than a private foundation) that has gross receipts in each taxable year of normally not more than \$5,000 is not required to file IRS form 1023 application for tax exempt status (the entity can still obtain a non-profit EIN for bank account purposes).

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Types of Non-Profit Legal Entities



**Non-profit
unincorporated
association**

Non-profit corporation
-Stock/non-stock
-Member/non-member
**-A large non-profit
corporate entity can
have local units or
divisions**

Other:
**Trust, Partnership,
LLC (not suited to
booster-type
organizations)**

IRS recognizes group exemptions

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How to Incorporate

- File Articles of Organization (for 501(c)(3) status see IRS sample articles with required clauses) (\$125 filing fee)
- Publish notice of incorporation (2 local papers, one a legal journal if possible) (\$200-300)
- [If the organization will have Members, establish membership registry and hold initial meeting]
- Name Directors, name officers, adopt other organizational minutes as needed
- Adopt By-Laws and Conflict of Interest Policy
- Obtain EIN from IRS
- Establish a system for record keeping and accounting

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How to Apply to the IRS for 501(c)(3) Status

- Form a qualifying non-profit legal entity
- Obtain EIN
- Complete and file 1023 application
 - File IRS form 1023 or 1023EZ application within 27 months of formation
 - To use form 1023EZ (filed at pay.gov), the organization must have less than \$50,000 per year gross revenue for its initial 3 years of operation, and assets having a value of less than \$250,000
 - The IRS has an eligibility worksheet in the 1023EZ instructions that must be completed, found at this link <https://www.irs.gov/pub/irs-pdf/i1023ez.pdf>
 - Form 1023 requires more information than the 1023EZ application, such as a detailed description of the organization's past, present and future activities; detailed financial information; and copies of the organization's governing documents
 - The fee to the IRS for filing the 1023EZ form is \$275, the 1023 form is \$600
- Receive IRS exemption letter (approx. 3 months but varies)
- Ongoing compliance with annual reporting requirements, and qualifying requirements

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How to Register with the PA Bureau of Charitable Organizations

- Exempt if annual gross receipts are less than \$25,000 – exemption chart at this link

<https://www.dos.pa.gov/BusinessCharities/Charities/RegistrationForms/Pages/Exclusions-and-Exemptions-Chart.aspx>

(but an annual filing is still required for entities who have obtained sales and use tax exemption)

- Educational institutions and any auxiliary associations, foundations, and support groups that are directly responsible to educational institutions are exempt.

- Registration packet is available for download at

<https://www.dos.pa.gov/BusinessCharities/Charities/RegistrationForms/Pages/default.aspx>

Include PA Form BC-10, most recent IRS return 990, or PA Form BL-23 and copies of Articles and By-laws

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How to File for PA Sales Tax Exemption

- Complete and file "Application for Sales Tax Exemption" (form REV-72) with copy of IRS form 990 and copies of articles and by-laws. The PA Institutions of Purely Public Charity criteria are more stringent than the IRS tax exemption criteria
<https://www.revenue.pa.gov/FormsandPublications/FormsforBusinesses/SUT/Documents/rev-72.pdf>
- PA Sales Tax exemption is limited to purchases made on behalf of the institution's charitable purpose. The purchase must be made in the name of the institution paid by funds from the organization. The institution must issue an exemption certificate (REV-1220) to the seller in lieu of the payment of tax
 - Charities who have applied and received sales and use tax exemption in PA must file an annual registration with the PA bureau of charitable organizations (\$15 fee)
https://www.dos.pa.gov/BusinessCharities/Charities/RegistrationForms/Documents/Registration%20Forms/purely_public_form.pdf
- If you are engaging in fund raisers where there is a sales tax liability (selling to the general public) you may be required to register for a sales tax number. You may register for a sales tax license number at www.pa100.state.pa.us

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Ongoing Compliance – Reporting

- Annual federal returns: IRS Forms 990-N, 990-EZ, 990 due 15th day of 5th month following financial year end. Failure to file the annual 990 for three years results in automatic revocation of tax-exempt status.
- PA Non-profit Corporations – file an annual report form with Dept of State on or before April 30 of each year in which there has been a change in corporate officers during the preceding calendar year.
- PA Bureau of Charitable Organizations – If gross receipts exceed \$25,000 and not otherwise exempt file BCO-10 (Charitable Organization Registration Statement) due 135 days after end of fiscal year.
- If sales tax exempt in PA (even if exempt from filing the BCO10 annual report), file annual ‘Institution of Purely Public Charity’ registration form with the PA Bureau of Charitable Organizations.

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IRS Notice of Change

IRS Notice of Change in Address or Responsible Party

- For each application for an EIN (employer identification number), the IRS requires a name and taxpayer identification number (social security number) of a 'responsible party.' This is a principal officer for a non-profit corporation and must be an individual. Entities must report a change of the responsible party (or of the entity's notice address) within 60 days using IRS Form 8822-B.
- There is no penalty for a delay in reporting, but the IRS will not recognize failure of the entity to receive an IRS notice that was sent to the responsible party/address of record for the entity.
 - [Form 8822-B \(Rev. December 2019\) \(irs.gov\)](#)

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Ongoing Compliance – Jeopardizing Exemption

- Inurement/private benefit
- Lobbying/political activity
- Not filing returns (discussed above)
- Substantiation and disclosure requirements

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THE RULES

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Inurement and Private Benefit

- 501(c)(3) exempt entities may not allow their assets or income to benefit in any substantial way a private person or entity. Transactions with ‘insiders’ (ie, officers, directors or members, and their families) must be arms length fair market value. The organization should establish and follow a conflict-of-interest policy.
- General Examples:
 - Booster members raising donated funds solely for their own child’s trip or tournament fees, not for the general charitable purpose of the entity
 - A scholarship granted to a family member of the scholarship selection committee or of the donor
 - An officer of the entity receiving excessive compensation from the entity

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Politics and Lobbying

- 501(c)(3) entities are not permitted to engage in campaigning for or against anyone running for political office.
- Generally, do not engage in lobbying, except under certain complicated rules relating to endorsing or opposing legislation – seek advice before engaging.

Substantiation and Disclosures

Charitable contributions (IRS Publ. 1771)

- For any cash gift over \$250, an acknowledgement (receipt) should be sent to the donor
- For any goods or services donated over \$75, the acknowledgement should give a good faith estimate of the market value of the donated goods or services
- The acknowledgement should state the amount received, the EIN of the charity, and that the donor received no cash, goods, services or benefits in return for the donation.

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Substantiation and Disclosures

- PA charitable solicitation requirements:
 - A PA charity may only solicit donations for its charitable purpose
 - Any solicitation shall include
 - Legal name of the charity
 - If requested, a name and address or phone number of a representative to answer inquiries
 - A full and fair description of the charitable purpose for which the solicitation is being made
 - A verbatim notice on printed solicitations: “The official registration and financial information of (insert legal name of charity) may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania 1-800-732-0999. Registration does not imply endorsement.”
 - A charity must exercise control over fundraising activities
 - https://www.attorneygeneral.gov/wp-content/uploads/2019/01/Solicitation_of_Funds_for_Charitable_Purposes_Act.pdf

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Substantiation and Disclosures

- Public disclosure
- 501(c)(3) organizations are required to make certain information available to the public:
 - 3 years of 990's (other than Sched B); copy of form 1023 application, and IRS determination letter to be provided on request (990 and determination letters may also be published on IRS site)

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Recordkeeping

- It is important a 501(c)(3) keep the following records:
 - A copy of the IRS confirmation of EIN letter
 - A copy of the IRS 1023 application
 - A copy of the IRS determination letter of charity status
 - A copy of all organization documents: Articles, Bylaws, Policies and any amendments
 - Descriptions and summaries of the organization's programs
 - Minutes of the governing body's meetings

Recordkeeping

- Financial records documenting:

- Income and donations
- Expenses
- Assets

- Financial records should be kept by type/program (tracking the itemization on the IRS 990 form)
- For small entities, a well-kept detailed check register may suffice

- Implement financial controls, examples are requiring two persons to sign checks above a certain dollar amount; do not permit a person to approve their own expense reimbursements; have the books and records reviewed periodically by another other than the person maintaining them.

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