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Legal Alert: Read This Before You Apply to the IRS for an EIN

New nonprofit organizations need an IRS-issued Employer Identification Number (EIN) in order to open a bank account, pay employees, file tax returns, and more. It is very easy to obtain an EIN, even easier to make mistakes during the application process, but surprisingly difficult to correct those mistakes. This Legal Alert explains common mistakes and how to avoid them.

1. Do not apply for an EIN until your organization has been incorporated.

An organization planning to operate as a nonprofit corporation should file its Certificate of Incorporation with a state government before applying for an EIN. Otherwise, you may have to file for a second EIN after your organization has been incorporated, and the use of two different EINs can confuse the IRS, your bank, government funders, etc. Also, if you file an EIN as a tax exempt organization, the IRS will expect you to start filing tax returns and will revoke the organization's tax exempt status (even if the organization doesn't have that status yet!) if tax returns aren't filed for three years in a row.

- *Tip: Depending on the state where you are incorporated, your corporate formation document may be called "Certificate of Incorporation" or "Articles of Incorporation" or a "Corporate Charter." In New York, the Certificate of Incorporation is filed with the Department of State.*

2. You do not have to pay anyone to get an EIN.

The Internal Revenue Service (IRS) is the government agency that assigns EINs. The IRS does not charge a filing fee. You can apply for an EIN online at this website: <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>. Or, you can fill out the IRS' SS-4 application form and mail or fax it to the IRS. Information about where to send or fax your application is available here: <https://www.irs.gov/filing/where-to-file-your-taxes-for-form-ss-4>

3. Tips for filling out the SS-4 application

The IRS provides detailed instructions on how to complete the form here: <https://www.irs.gov/pub/irs-pdf/iss4.pdf>. A few sections of the SS-4 application that can create issues if you don't fill them in correctly, are noted below.

a. On Line 1, list the complete, accurate name of the organization.

You should enter the name of the entity exactly as it appears on the Certificate of Incorporation (or Articles of Incorporation or Corporate Charter). If there is an "Inc." at the end of the name, include that.

b. On Line 9a, check the correct type of entity.

If you are planning to operate as a tax exempt organization, do not check the box that says “corporation.” Most organizations that intend to operate as a 501(c)(3) public charity should check “other nonprofit organization” instead of “corporation” and then write, “501(c)(3) public charity.” Exceptions include churches or church-controlled organizations, which should check “church or church-controlled organization.”

c. On Line 11, list the date of incorporation.

For a newly incorporated nonprofit organization, the date the business was started is the date the Certificate of Incorporation was filed by the state. This is true even if the organization operated before that date as an unincorporated association.

d. Want more information? Consult the IRS’ detailed instructions.

As noted above, the IRS instructions for the SS-4 are available at <https://www.irs.gov/pub/irs-pdf/iss4.pdf>

4. If you’ve already filed form SS-4 and have been assigned the wrong type of entity, write to the IRS asking them to change the type.

A nonprofit organization may discover that the IRS’s EIN database lists the organization’s “entity type” as something other than a nonprofit (for instance, the organization may be listed as a business corporation, LLC, or a sole proprietorship). An incorrect EIN “entity type” classification can result in the IRS rejecting the organization’s IRS 990-N or other tax filings. It can also result in the IRS requesting that the organization file an IRS 1120 (corporation income tax return), IRS 1120-S (income tax return for an S corporation) or another tax return form that is not appropriate for a nonprofit.

To confirm what entity type has been assigned to your organization, call the IRS. If your organization should be listed in the IRS’ EIN database as an “other nonprofit organization” but is not, you should write to the IRS to ask them to correct the entity type. The letter should state:

- The responsible party’s full legal name;
- The responsible party’s Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN);
- The business or entity’s full legal name;
- The business or entity’s employer identification number (EIN);
- The business or entity’s mailing address; and
- The information associated with the EIN number that needs to be changed.

It is also a good idea to attach the Certificate of Incorporation and, if you have it, the IRS 1023 application for 501(c)(3) status. You can send the letter to:

Internal Revenue Service
333 West Pershing Rd.
Mail Stop 6055 S-2
Kansas City, MO 64108

5. An EIN is not the same as tax exempt status.

An EIN is the IRS' record that your organization exists. It is not the same as having tax exempt status. In order to apply for 501(c)(3) tax exempt status, most nonprofits must file an IRS 1023 or IRS 1023-EZ. You can find information about those forms, as well as the applications for tax exempt status filed by other types of tax exempt organizations, at <https://www.irs.gov/charities-non-profits/applying-for-tax-exempt-status>

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