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Incorporating as a Non-Profit in New England

As an organization supporting the food system, you have the power to choose the type of organization that fits best for you and your goals. A non-profit structure may be the right fit for your organization.

This legal guide:

- discusses the pros and cons of non-profit organizations
- details how to become a nonprofit organization
- explains how to apply for federal 501(c)(3) charitable organization status
- discusses fiscal sponsorship as an alternative to 501(c)(3) status

What is a Non-Profit?

A non-profit corporation is an **organization whose mission centers around a social cause or shared goal** – not making a profit. The activities of the non-profit should be consistent with its mission.

Non-profit organizations can be entitled to **tax exemption – on both the state and federal level**. Once your organization is incorporated within your state, you have the option of seeking federal non-profit status, often referred to as 501(c) status. As a general matter, some states require a nonprofit to apply separately for state exemption, whereas other states will treat an organization as exempt from state tax as long as it has a federal exemption.

What are benefits of being a non-profit?

Organizations who choose to operate as non-profits enjoy certain benefits granted by the Federal as well as by state governments. A non-profit organization may be eligible for exemption from certain types of taxes and may have access to types of funding, like donations and grants, that might otherwise be unavailable. In addition, operating as a corporate entity may also shield your organization from some legal liabilities.

Benefits of a non-profit include:

- Non-profit status allows you to apply for certain types of **tax exemptions** including state and local property and sales tax.
- You could become **eligible for a wide range of public and private grants**.
- Non-profits can receive **reduced postal rates**. If large mailings are a big part of your business plan, this could be beneficial.



- Once your organization is incorporated as a non-profit in your state, you may decide to apply for federal tax-exempt status as well. This certification allows you to be exempt from **federal corporate income tax**. If you are planning on fundraising or asking for donations for your organization, this would allow those funds to **be tax-exempt**. A further benefit to your donors is that their donations may be tax deductible.
- Federal non-profit status would also allow you to **independently apply for various grants** and funding without a fiscal sponsor.

How do I get started?

Once you have decided that you would like to start a non-profit, you can get started incorporating as a non-profit corporation in your state. Each state has its own rules about non-profit formation. For example, Massachusetts non-profits corporations are governed by [Chapter 180 of the Massachusetts General Laws](#). While the process is somewhat uniform, each New England state has slight variations in what is required or recommended. The table below summarizes the different requirements and recommendations.

Step #	Task	ME	NH	VT	MA	RI	CT
1	Choose a name!	✓	✓	✓	✓	✓	✓
2	Recruit a board of directors	✓	✓	✓	✓	✓	✓
3	Appoint an Incorporator	✓	✓	✓	✓	✓	✓
4	Appoint officers (president, secretary/clerk, treasurer)	✓	✓		✓	✓	
5	Appoint a registered agent.	✓	✓	✓	✓	✓	✓
6	File your Articles of Incorporation with the state.	✓	✓	✓	✓	✓	✓
7	File an Initial Report						✓
8	Apply for a Federal Employer Identification Number (EIN).	✓	✓	✓	✓	✓	✓
9	Approve and adopt organizational bylaws.	✓	✓	✓	✓	✓	✓
10	Create a mission statement.	✓	✓	✓	✓	✓	✓
11	Approve and adopt a conflict of interest policy.	✓	✓	✓	✓	✓	✓
12	Apply for your state tax registration.	✓	✓	✓	✓	✓	✓
13	Register for charitable solicitation.	✓	✓		✓	✓	✓

Naming: The right name sets the stage for your organization. Use your state’s online name search tool to ensure that you won’t choose a name that is already in use. Check on the Secretary of State website for more information.

Board of Directors: Your Board of Directors will be the governing body of your organization, responsible for approving various plans and budgets. A good practice is to recruit at least three unrelated individuals for your board. If you’re in New Hampshire, you’ll need at least five individuals.

Incorporator: The incorporator is the person in charge of setting up the nonprofit organization, including preparing and filing incorporation documents. Other responsibilities can include selecting the first board of directors, setting up the initial board meeting and assisting with the adoption of the organization's by-laws. The founder of the organization is a likely choice for an incorporator, but there can be multiple incorporators.

Officers: Officers take on specific roles within the organization. Common officer positions are treasurer, secretary, and president. Review your state's requirements for the duties under each role. If you're in Connecticut or New Hampshire, you'll need at least one officer to make meeting minutes and be responsible for your incorporation records. In Rhode Island, Vermont, Maine, and Massachusetts you must have a treasurer, secretary/clerk, and president.

Registered Agent: A registered agent is a person (or entity) that is responsible for receiving any official legal communications on behalf of your organization. This person must be at least 18 years of age and have a physical address – not a P.O. Box – within the state in which you are incorporated. You can be your own registered agent. There are also companies who can be hired to act as your registered agent.

Articles of Incorporation: These articles become the founding document of your organization, marking its official creation. The Articles of Incorporation need not be complex and in many cases can be prepared by completing an online form with your state's Secretary. If seeking federal tax-exempt status, make sure the language in your documents meets the requirements for both your state and the IRS.

Initial Registrations: Filing an initial report is only required in Connecticut and is due 30 days after the Articles of Incorporation are filed. There may be other initial registrations required by other states. For example, in Massachusetts, you are required to register with the Attorney General. Also, for organizations that wish to fundraise, registrations may be required (see below).

Employer Identification Number (EIN): This is a unique number that will be assigned to your organization by the IRS. This number allows you to open a bank account and apply for federal tax-exemption. To be assigned an EIN, fill out [IRS Form SS-4](#).

Bylaws: Your bylaws will act as the detailed governing documents for your organization and can address a wide range of topics. At your first Board of Directors meeting, the board should formally adopt these bylaws.

Mission Statement: The mission statement defines the purpose of your organization. It describes what you do and why you exist. Although not required, it is an important compass to help guide the decisions and activities of the organization.

Conflict of Interest Policy: A conflict of interest policy is strongly encouraged. This policy will address the steps to take when an organizational leader has conflicting personal interests in a

transaction or arrangement being entered into by your organization. This policy should be adopted by your Board.

State Tax ID Number: Each state has a different process for state tax registration. Generally, this process can be completed online and enables your organization to file state taxes and receive various state benefits such as unemployment insurance and income tax withholding. Check with your state Department of Revenue for more information.

Charitable Solicitation: If you plan to accept donations, you will have to register through your state for charitable solicitation certification on an annual basis if you are in Maine, New Hampshire, Massachusetts, Rhode Island, or Connecticut. Vermont does not require this certification. If you plan to solicit donations from residents outside of your home state, you should register in those states as well.

Applying for federal and state tax exemption.

After you have incorporated your nonprofit organization, you can apply for federal tax exemption as a 501(c)(3) charitable organization. The steps to receiving your federal exemption are generally as follows:

1. File the required documents. For a 501(c)3 charitable organization, you will submit [Form 1023](#) along with your organizing documents. The goal of these forms is for the federal government to understand your mission and what types of activities you will be engaged in pursuit of this mission. You will want your submission to instill confidence in the reviewer that there will be (1) financial accountability on the part of your organization and (2) assurances that your mission falls under an acceptable exemption. Additionally, you'll submit a copy of your bylaws, financial information, and EIN.

2. Receive a ruling. The IRS will get back to you with their ruling on your federal tax-exempt status.

3. Apply for additional state tax-exemptions. Once you have been certified tax-exempt by the IRS, you will be able to apply for additional sales and income tax exemptions through your state. If you are in Maine, New Hampshire, Rhode Island, or Vermont, you won't need to do anything extra to be exempt from state income tax once you have your 501(c)3 certification. If you are in Vermont, Connecticut, or New Hampshire, you won't need to do anything extra to be exempt from state sales tax once you have your 501(c) certification.

What are some of the drawbacks of becoming a non-profit?

While there are many benefits to becoming a non-profit, there are also additional filing requirements. There are certain **annual filings to the state and federal government** that are required to maintain your status as a non-profit organization. Additionally, these annual filings are generally available to the public.

All non-profits are required to have a **board of directors**. This means that you will have less direct control over the direction of your organization than you would have as the sole owner of a for-profit business. Finally, there are costs associated with becoming a non-profit. Filing the various required forms often come with fees and can total hundreds of dollars.

Additionally, **your organizational activities will necessarily be restricted to only those that are consistent with your mission** as recorded with the state and federal government. This can be quite limiting, and may disallow any spontaneous expansions in the scope of your mission. Changes in the scope of your mission may require amendments to your Articles of Incorporation and, in some cases, notifications to the IRS.

Example: The mission of a community farm in Massachusetts is to preserve a historic farm, while also providing educational programming to the community regarding sustainable agricultural practices. Given the current state of the world, the organization's leadership and community base has become quite interested in climate change and would like to raise money for events centering on this issue. Despite the fact that climate change and agriculture are intertwined, the farm may be limited in its ability to conduct activities that are not explicitly focused on the current mission.

A Note on Fiscal Sponsorship:

If you are incorporated at the state level and have decided not to pursue federal recognition of your non-profit 501(c) status, you may still have access to public and private grant applications. However, you may need to acquire a fiscal sponsor in order to apply.

A fiscal sponsor is generally another organization with 501(c)(3) status who agrees to partner with your organization and take on some administrative responsibilities. At a minimum, this means that a fiscal sponsor would receive grants or funding on your behalf and then grant them back to your program. Fiscal sponsors may also perform various other administrative tasks, which could allow you to focus more on your mission and day-to-day operations, rather than the back-office portions of non-profithood. As Sponsor, they receive compensation, typically a percentage of the grant, to cover the costs of administration.

Example: You would like to expand your CSA program to provide free shares to low-income community members and seniors. You have received non-profit status from your state of Maine but are holding off on applying for 501(c)(3) status. Meanwhile, there is a private grant available for organizations pioneering new methods of healthy food distribution in rural communities, but it requires you to be federally tax-exempt. You decide to partner with your local regional food bank, a federally certified non-profit, as your fiscal sponsor. Assuming the use of the funds is consistent with the food bank's non-profit purpose, the grant can be applied for in the name of the food bank. When awarded, the funds can be allocated to your organization. Note that the

food bank would also have oversight responsibilities over your use of the funds (and you would likely have corresponding reporting obligations to keep the food bank informed).

Conclusion

You may find it helpful to consult with an attorney while forming your nonprofit organization and applying for state or federal tax-exempt status. The [Legal Food Hub](#) can connect you with an attorney in your state who is able to help.

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Looking for legal help?

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