

STATE OF HAWAII
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION



Business Action Center
"We're in the business of helping people."
808-586-2545



FAQs: GUIDE FOR NON-PROFIT ORGANIZATIONS

Q1: What is a non-profit organization ("NPO")?

A: "Non-profit organization" ("NPO") is a broad term used to describe organizations whose activities are mission-driven (to benevolently serve a public, civic, charitable or societal purpose), rather than profit-driven (to generate income for its owners/principals).

Q2: Does my NPO need to be a corporation?

A: No, however, incorporation does provide some degree of liability protection for directors and officers. You may choose to structure your NPO as a non-profit corporation, unincorporated association, limited liability company ("LLC") or trust. To form a non-profit corporation or LLC, you must file articles of incorporation (or articles of organization with respect to an LLC) with Hawaii's Dept. of Commerce & Consumer Affairs' Business Registration division ("BREG"). If you wish to structure the NPO as an unincorporated association, no business registration is required with BREG, however, most unincorporated associations will choose to register their name as a Trade Name with BREG. For more information, call BREG's Business Action Center at 808-586-2545.

Q3: Are all NPOs exempt from paying federal and state taxes?

A: No. There are different tax exemptions in the federal and state tax laws relating to NPOs. Depending on the NPO's activities and how its income is classified, it may qualify for all, some, or none of these tax exemptions. This is because some NPO activity is favored by the federal and/or state tax codes while others are not. In addition, applying for these tax exemptions is not required. Accordingly, some NPOs enjoy tax exemptions, while others do not.

Q4: Does my organization need to qualify for one of these tax exemptions in order to be considered a "nonprofit"?

A: No. There are many NPOs that either have not applied for or do not qualify for any tax exemptions. However, these organizations are still NPOs that strive to serve the "greater good," rather than operate solely to earn profits for its owners.

Q5: What kind of organizations may qualify for federal tax exemptions (with the Internal Revenue Service)?

A: The federal tax code describes various types of organizations that qualify for tax exempt status. The most common of these NPOs is a 501(c)(3) organization, usually referred to as a "public charity" or "private foundation." Section 501(c)(3) of the Internal Revenue Code is the law that establishes this tax exemption. While there are other kinds of tax exemptions, the 501(c)(3) exemption is commonly sought after because it offers the most favorable tax treatment. Donations to such organizations are tax deductible to the donor, thus providing an incentive to donate to that organization.

Generally, a 501(c)(3) organization is formed and operated exclusively for one or more the following purposes: (1) Religious; (2) Charitable; (3) Scientific; (4) Testing for public safety; (5) Literary; (6) Education; (7) Fostering national or international amateur sports competitions; and/or (8) Prevention of cruelty to children or animals. If you engage in one or more of these activities, you may apply for 501(c)(3) tax exempt status for charitable organizations on Form 1023 , Application for Recognition of Exemption (and instructions). IRS Publications 557 and 4220 also offer valuable information on other qualifications. IRS Publication 1828 explains how to protect and keep your tax exempt status.

Package 1024 , Application for Recognition of Exemption may used by other tax-exempt organizations that do not fall in the "charitable organization" category. Please note that the tax benefits are different than those allowed to 501(c)(3) organizations.

Q6: What is the difference between a "public charity" and a "private foundation"?

A: In general, public charities ("PCs") solicit funds from the public and receive most of their financial support from the public at large, while private foundations ("PFs") receive the bulk of their support from one source (e.g., a corporation or family). In most cases, charitable trusts are deemed to be PFs. PFs typically engage in grant-making to other charitable organizations that provide services. Others are classified as "operating" foundations because they directly perform their charitable purpose (e.g., operating a facility). PFs are also subject to different tax laws that are generally less favorable than those applying to public charities.

Q7: Do churches and religious organizations need to apply for 501(c)(3) status on Form 1023 too?

A: No. Such organizations are automatically considered tax-exempt and are not required to apply for the exemption. However, many choose to apply with the IRS to ensure contributors that their donations will be tax-deductible. *See Publication 1828 for more information on how to secure automatic exempt status for your church or religious organization.*

Q8: My organization has a parent or national organization that received its 501(c)(3) status from the IRS. Can my organization "piggy-back" on the parent/national organization's tax exempt status?

A: Yes. This is possible only if the parent entity has a "group exemption letter" from the IRS, which will allow its subordinate organizations to also gain tax exempt status under that letter. There are rules as to what constitutes a "subordinate organization." *See IRS Publication 557 for more information about the group exemption letter and how to keep it in force.*

Q9: Is there a listing of organizations that have received 501(c)(3) status?

A: Yes. IRS Publication 78 provides a listing of organizations that can receive charitable contributions, which are tax-deductible to the donor. *For more info, go to www.irs.gov to view Publication 78 (this on-line version is updated regularly).*

Q10: If my NPO obtained 501(c)(3) status from the IRS, do I also have to apply separately with the Hawaii Dept. of Taxation to gain income tax exempt status in Hawaii?

A: No. The State of Hawaii will follow the IRS's income tax treatment of your NPO if you have secured federal 501(c)(3) tax exempt status. However, you may want to apply for the Hawaii GET exemption, which is a separate tax exemption with different benefits. *For organizations that may qualify, see Dept. of Taxation Tax Facts 1998-3 at www.hawaii.gov/tax.*

Q11: What kind of organizations may qualify for state tax exemptions (with the Hawaii State Dept. of Taxation)?

A: The General Excise Tax ("GET") law allows a tax exemption for the following types of organizations:

(1) Fraternal benefit societies, orders, or associations; (2) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities and that of operating or managing a homeless facility, or any other program for the homeless; (3) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare and from which no profit inures to the benefit of any private stockholder or individual; and (4) Hospitals, infirmaries, and sanitarium.

See Dept. of Taxation Forms G-6 and G-6S with accompanying instructions for more details about the GET exemption. For and in-depth discussion regarding Hawaii's taxes & nonprofits, see Dept. of Taxation's Tax Facts 99-4.

Q12: Are there other Hawaii state registration requirements for NPOs?

A: Yes. Beginning January 1, 2009, all charitable organizations that solicit contributions from the public are required to register with the Hawaii State Attorney General's Charity Resource Office. To find out more about the new law and the on-line registration process, please go to: <http://hawaii.gov/ag/charities>. The site also provides useful information to any NPO under its "Helpful Guides" and "Helpful Links" sections.

This FAQ is provided for informational purposes only and does not replace the advice of a qualified attorney or accountant.