

Starting from Scratch to Save Lives

- Formation of a Nonprofit Corporation
- Applying for 501 (c)(3) status

Beverly Jones
ASPCA Corporate Counsel



© 2011 ASPCA® All Rights Reserved

Formation

- 2 processes: **incorporation** (State)
exemption (Federal & State Tax)
- State Incorporation: fairly straightforward
 - NY v. Delaware v. other states
 - New York's Nonprofit Corporations law
 - Always **EXPEDITE** in NYS



2
© 2011 ASPCA® All Rights Reserved

Formation: Important Provisions to Include in Your Certificate of Incorporation

- Purpose Clause
- 2 required pieces to get exemption later:
 - 1) What happens on dissolution?
 - 2) Only 501 (c)(3) purposes

3

© 2011 ASPCA® All Rights Reserved



Formation: Question about Address

Question:

I don't have an office yet, can I use a home address?

Answer:

YES!



© 2011 ASPCA® All Rights Reserved



You're Incorporated... Now What??

- Organizational Meeting
- Elect Officers/Directors
- Adopt bylaws (internal governance)
- Get a Tax ID #
- Apply for federal tax exemption

5

© 2011 ASPCA® All Rights Reserved.



501 (c)(3) Status

What is 501 (c)(3) status and what does it do for me?

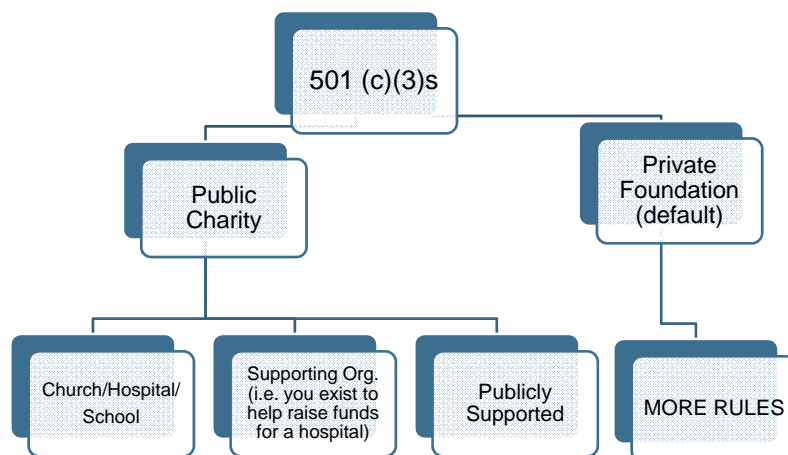
- Don't have to pay tax on income the organization brings in
- Many funding sources restricted to 501 (c)(3)s
- Can give individual donors a tax break
- Downside: paperwork/compliance
- Operated "not for profit": does not mean you can't get paid, just that you can't distribute gains to your insiders

6

© 2011 ASPCA® All Rights Reserved.



Taxonomy of 501 (c)(3)s



7

© 2011 ASPCA® All Rights Reserved.

Specific Questions...

Question:

What are the costs associated with becoming a 501 (c)(3)?

Answer:

\$400 for organizations with annual gross receipts < \$10,000 during preceding 4 years or \$850 for organizations with annual gross receipts ≥ \$10,000 during preceding 4 years

Question:

Do I need a lawyer to file paperwork?



Answer:

Probably a good idea! - Lawyer's Alliance

8

© 2011 ASPCA® All Rights Reserved.

Specific Questions...

Question:

How long does it take to get 501 (c)(3) status?

Answer:

Plan for **at least** 6 months to a year. Checked in mid July and the IRS was reviewing applications submitted in January 2011.

9

© 2011 ASPCA® All Rights Reserved



Public Disclosure of Documents



10

© 2011 ASPCA® All Rights Reserved



Public Disclosure: What's Public?

- Application for exemption
- Form 990 (for 3 years)
- All schedules to the same, with some exceptions (names and addresses of donors)

11

© 2011 ASPCA® All Rights Reserved



Public Disclosure: What do I have to do for the “public”?

A) Make documents available for inspection

or

B) Provide copies (or make available on Internet)

12

© 2011 ASPCA® All Rights Reserved



Governance

In recent years, the IRS has been focusing on governance issues, which are not strictly related to taxes.

Conflicts of Interest

- 1023/990 will ask you if you have a policy, your answer should be yes

- a) IRS red flag
- b) State law duties

Question:

Can one be an officer/director for more than 501 (c)(3)?

Answer:

Yes, but you must be very careful about what hat you're wearing (Duty of Loyalty)

13

© 2011 ASPCA® All Rights Reserved.



Governance



- A) Whistleblower
- B) Document Destruction
- C) Executive Compensation Determination

14

© 2011 ASPCA® All Rights Reserved.



Unrelated Business Income

UBTI

Why Congress changed the rules in 1954

- Trade or business
 - Regularly carried on
 - Unrelated to exempt function
- Must pay tax on income **and** cannot be substantial part of/primary purpose of the organization. **Can** however do related sales, one time or annual sales (not regularly carried on), or donate proceeds from separate business

15

© 2011 ASPCA® All Rights Reserved.



FORM 990

- Must file something by the 15th day of 5th month after end of fiscal year
- New version of form captures a lot of information



16

© 2011 ASPCA® All Rights Reserved.



Exempt Organizations: Status Revoked for Not Filing Annual Return Notice

- Most tax-exempt organizations, other than churches, must file a yearly return or notice with the IRS.
- If an organization does not file as required for 3 consecutive years, the law provides that it automatically loses its tax-exempt status.
 - Loss of exempt status means an organization must file income tax returns and pay income tax, and its contributors will not be able to deduct their donations.

17

© 2011 ASPCA® All Rights Reserved.



What Do We File?

Financial Activity	Filing Requirement
Gross receipts normally < or = to \$25,000 Note: Organizations eligible to file the e-Postcard may choose to file a full return	990-N (e-Postcard)
Gross receipts < \$50,00 and Total assets < \$1.25 million	990-EZ or 990
Gross receipts > or = to \$500,000, or Total assets > or = to \$1.25 million	990
Private Foundation (regardless of financial activity)	990-PF

18

© 2011 ASPCA® All Rights Reserved.



Maintaining Exempt Status

Don't Do

- **No** election activity
- **Do** Track & report lobbying, **but** don't do too much
- **Don't** give your profits to any individual
- **Don't** serve a private interest (serve the animals!)
- **Don't** operate a sizable unrelated trade or business
- **Don't** sell insurance
- **Don't** break the law
- **DO** complete annual filings on time!

19

© 2011 ASPCA® All Rights Reserved



Visit

<http://challenge.aspcapro.org/webinars/archives>

**For ASPCApro's webinar archives
Dozens of free webinars
you can watch 24/7**

20

© 2011 ASPCA® All Rights Reserved

