

Does our nonprofit need to be a 501(c)(3)?

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I perform in a choir of 100 singers who get together and perform in the community. Members pay dues and buy costumes, and the choir keeps a small bank account. Do we need to incorporate or become a 501(c)(3)?

The choir could certainly incorporate as a nonprofit, and could also seek 501(c)(3) tax-exempt status from the IRS. While tax-exemption can help nonprofits obtain donations or grant funding, 501(c)(3)s have significant oversight and management requirements.

For-profit corporations can be formed for any lawful purpose, but a public benefit corporation must be formed for a public or charitable purpose. If you're specifically looking to qualify as a 501(c)(3), you'll need to specify a charitable, scientific, literary or educational purpose. Religious corporations can also qualify for 501(c)(3) status.

Other sections of the IRS code govern other types of nonprofit organizations, including civic leagues and social welfare groups, medical or legal service corporations and humane societies.

Mutual benefit corporations, including chambers of commerce, cooperatives, and trade associations qualify under another subsection of the IRS code. Mutual benefit corporations miss out on several benefits of 501(c)(3) corporations. For example, contributions to these groups are normally not tax-deductible.

The main reason to become a 501(c)(3) is to be eligible for state and federal tax exemptions. If your nonprofit earns a substantial amount of money, you'll want to apply for exemption.

You don't necessarily need to incorporate for tax exemption, but your organization should meet with a professional before making any decisions about incorporating. The main benefit of incorporation is liability protection for your board and members.

Incorporating can protect your directors, officers and employees from being personally liable for corporate debts or liabilities. Of course, limited legal liability should be combined with a good general liability insurance policy, as there are significant advantages to both.

What if your organization chooses not to incorporate? Unincorporated nonprofit associations can also qualify for tax-exemption. Nonprofit associations are groups of two or more people who have decided to get together for a common lawful purpose other than to operate a business for profit.

Your choir is likely being operated as an unincorporated association. As such, you can enter into contracts and be sued, but contributions to your group are not tax-deductible and your members may have personal liability exposure. It may be beneficial for you to become a public benefit corporation. If you decide to, please work with a professional adviser, such as a nonprofit attorney, who can help you file the right forms and give you some direction as your group moves forward.