



The Basics of Obtaining a Non-Profit Status For Your Farmers' Market

Creating a Mission Statement

Even for a market that has been established for some time, choosing a purpose and creating a mission statement is helpful beyond simply obtaining a tax-exempt status as it also articulates the vision and goals of your organization. A mission statement should be brief and timeless, embodying what your market strives to accomplish. As a farmers' market, this will likely focus on raising public awareness of the economic and health benefits provided by consuming food products raised in a local community. The mission statement your market chooses will help guide the actions of the organization through times of growth and change.

Recruit the Initial Board of Directors

Another essential step for a market to take before incorporating as a nonprofit is to recruit an initial board of directors. The board members can help with the creation of the purpose and mission statement, writing the articles of incorporation, and approval of the original bylaws.

Reserve Your Market's Name

Choosing an official name for your organization and reserving it with the Secretary of State must be done before filing articles of incorporation. This assures that no other organization will be operating under the name you have chosen. The Secretary of State's website has links to all the necessary forms. If your market has not yet registered its name, a preliminary name availability search may be done by accessing the website at www.sos.state.mn.us, under "Business Center", "Online Services", "Search", or by calling their Business Information Line between 9:00am and 4:00pm, Monday through Friday at (651) 296-2803 or toll free 1-877-551-6SOS (6767). You can print the "Request for Reservation of Name" form at <http://www.sos.state.mn.us/index.aspx?page=1094> and send it to the Secretary of State's office along with a \$35 filing fee.

File Articles of Incorporation

After your market's name has been reserved, the next step is filing articles of incorporation with the same office for a cost of \$70. The Minnesota Council of Nonprofits explains "the main purpose of incorporating an organization is that of risk management. Filing articles of incorporation with the Minnesota Secretary of State's Office provides a limited liability for the governing body of the organization. If directors act in a responsible, reasonable way, they can avoid personal liabilities to creditors of the organization. However, this does not

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include debts to the Internal Revenue Service for due payments, or due to fraudulent activities.”

The founders of your organization should write the articles, which formally name the entity, its location, and its purpose. This document is the legal record of how the organization is to be managed. The Minnesota Nonprofit Corporation Act, Section 317A of the Minnesota Statutes, lists laws that govern Minnesota nonprofit corporations. It is important to remember when drafting your market’s original articles of incorporation that parts of the Minnesota Nonprofit Corporation Act state the default laws that nonprofits must follow, unless their articles or bylaws state otherwise. Filing this document is necessary prior to applying for tax-exempt status from the Internal Revenue Service. The IRS requires specific language to be used describing the purpose of the organization, and the requirements it must follow for exemption. Sample articles for a farmers’ market incorporating as a 501(c)(6) organization are available on the Minnesota Farmers’ Market Association’s website. Once finished, your articles may be sent to the Business Services Division of the Minnesota Secretary of State’s Office along with a \$70 filing fee. Once your market’s articles are filed, you will receive a “Certificate of Incorporation.”

Draft Bylaws

While your market is waiting to receive confirmation of its incorporation, the board of directors can draft and adopt corporate bylaws to govern how the market will be run. Bylaws are not required by law, but they can provide structure and guidance as the internal rules and regulations of your organization. Section 317A of the Minnesota Statutes detailing nonprofit law in Minnesota provides the general structure of what may be included in bylaws while also providing substantial flexibility. As the bylaws are much easier to amend than your articles of incorporation, they can be revised often to accommodate the changing needs of your market. Bylaws should address organizational issues such as:

- Membership — if the organization will have members, who they are, how and when membership meetings will occur, what notice is required for meetings, requirements of a special meeting, quorum, and voting.
- Board of directors — number, election process, meetings, length of term, number of terms allowed, vacancies, removals, quorum, officers, and standing committees.
- Fiscal management — fiscal year, and committee/officer responsibilities, compensation of directors, reporting requirements and dues.
- Amendments — how will amendments be made and approved.

At the first meeting of the initial board of directors, the bylaws can be approved and adopted. The organization can elect new board members and officers according to the procedures outlined in the bylaws at this meeting.

Obtain a Federal ID Number

The board can then begin the process of obtaining a tax-exempt status for the market. First, your organization must apply for a Federal ID Number, also called an EIN. This number serves a purpose similar to that of an individual’s social security number and must

be obtained before filing with the IRS. There are no filing fees, but your market must be incorporated prior to applying. While processing can take up to five weeks if application is through mail or fax, it can be done immediately through Tele-TIN telephone filing. The “How to Apply for an EIN” page of the IRS website contains all the directions needed for the process at: <http://www.irs.gov/businesses/small/article/0,,id=97860,00.html>

Apply for Tax-Exempt Status with the IRS

While it is a common misperception that all nonprofits are automatically tax-exempt, your market will not actually be entitled to this benefit until you have applied or exemption with the Internal Revenue Service. Section 4 of Publication 557 from the IRS contains information about the federal laws regulating 501(c)(6) organizations and is available free in PDF form at their website, here:

<http://www.irs.gov/charities/article/0,,id=96122,00.html>

Also available at this website is Form 1024 for requesting a ruling or determination letter along with instructions for completion. The initial sections for all applicants must be filled out, as well as Schedule C for 501(c)(6) organizations. Form 8718, available here: <http://www.irs.gov/pub/irs-pdf/f8718.pdf>, must be included when filing the form, along with the filing fee. The filing fee is \$850 for an organization anticipating gross receipts averaging more than \$10,000 during its first four years and \$400 for an organization anticipating gross receipts averaging less than \$10,000 during its first four years. The two forms and the fee must be submitted together, and processing may take up to six months. They can be sent to:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

Keep Up With Annual Filing

Despite tax-exempt status, your market will still have to file an annual tax return with the IRS. Smaller organizations can generally file the simpler 990-EZ form, available each year on the website of the IRS. Similarly, a nonprofit incorporated in Minnesota must continue to register annually with the Secretary of State. Failure to register by December 31st each year will result in dissolution of the organization, and a \$25 fee will apply to reinstate the organization’s corporate existence. The Secretary of State’s Office will send out a registration form, which must be filled out and returned to:

Secretary of State, Records Processing Division
180 State Office Building
100 Constitution Ave.
St. Paul, MN 55155-1299

Acquiring a Lawyer

To assist you with the process of obtaining your non-profit status, you may utilize the following website powered by the Minnesota State Bar Association to locate a lawyer specializing in non-profit businesses and corporations: www.mnfindalawyer.com

Minnesota Farmers’ Market Association

Website: www.mfma.org

Email: info@mfma.org

IRS Form Links:

Gain your EIN Number

An employer identification number (EIN) is your account number with the IRS and is required regardless of whether the organization has employees. Include the organization's EIN on all correspondence to the IRS. Apply for an EIN by completing Form SS-4, Application for Employer Identification Number, by calling toll-free (866) 816-2065, or by submitting an online version of the form via www.irs.gov. Here is the form:

<http://www.irs.gov/pub/irs-pdf/fss4.pdf> and its instructions:

<http://www.irs.gov/pub/irs-pdf/iss4.pdf>

Filing Articles of Organization/Incorporation

You will need to file your articles of Incorporation with the Secretary of State www.sos.state.mn.us and receive your certificate of incorporation before you complete the form 1023 application for tax exempt status. Start preparing these now. The IRS includes examples on page 69 of the following .pdf <http://www.irs.gov/pub/irs-pdf/p557.pdf>. Articles of incorporation contain basic structural information, such as the name of the nonprofit corporation, its registered agent, registered office address, and the corporation's membership structure, if any. Nonprofit corporations also often include essential tax exemption information in their articles, such as their tax-exempt purpose, a clause dedicating their assets to another 501(c)(3) nonprofit organization or class of organizations should the nonprofit end, and other operating restrictions necessary for the nonprofit to obtain tax-exempt status.

Letter of Support

Since a 501(c)(3) spends any revenue it receives to provide a service such as education or health care to the public. Start preparing now to validate this claim, by working with your city government to gain their letter of support, specifically indicating how your market furthers the city's plan of educating, developing, and supporting a healthy sustainable community. This letter of support should go with your form 1023 application when you are ready to submit.

Apply for the 501c3 Status Using Form 1023

On the www.irs.gov website, there is a very lengthy document (Publication 557) about the process of gaining non-profit status...here is the link to the .pdf:

<http://www.irs.gov/pub/irs-pdf/p557.pdf>

Page 4 of this document walks you through organizing the documents that will need to go along with the application form 1023 for a 501c3 status.

Page 20 of this document talks specifically regarding the 501c3 process

Page 65 walks through the different types of 501c's to ensure you apply for the correct status (the MFMA is a 501c6 and we completed application form 1024)

Here is the actual form 1023, so you can ensure you have compiled the information necessary to complete the application: <http://www.irs.gov/pub/irs-pdf/f1023.pdf>.

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