



Incorporation—information for ATD chapters

Incorporation helps to protect board members from liability arising from acts of the organization or its officers, board, or staff. Maximum liability of an incorporated organization is generally limited to the assets of the association. Statutory regulations governing unincorporated associations are fragmentary and incomplete. Thus, their legal status is less clear. The traditional purpose of incorporation is to shelter the “owners” from personal liability. Corporate status allows an entity to be considered a “person” under the law, and to sue and be sued in its corporate name, thereby sheltering its officers against liability. Federal laws do not require chapters to incorporate, however ATD strongly encourages chapters to incorporate for their own protection. In addition, state or local laws, however, may require incorporation. Local legal counsel should be sought concerning if, how, and in what form a chapter should incorporate. In deciding whether or not to incorporate, the chapter should consider state and local regulations, liability factors, vendor relationships, legal fees, and administrative burdens associated with incorporating.

Click [here](#) to access state nonprofit incorporation forms and information available through the Internal Revenue Service (IRS) website.

Benefits and disadvantages of incorporation

To help you decide whether incorporation is right for your chapter, we've compiled a list of advantages and some important drawbacks.

Benefit #1: Tax exemptions

As a nonprofit corporation, your chapter is eligible for state and federal exemptions from corporate income taxes plus certain other taxes. If your chapter expects to make a profit from your events, exhibits, or product sales, you would likely want to seek an exemption. A tax-exempt nonprofit will also save on local taxes such as those levied by your state and county. Only with a state-recognized non-profit corporation can you be exempt from income, sales, and property taxes.

Benefit #2: Protection from personal liability

Shielding members of your chapter from personal liability is key among the benefits of nonprofit incorporation. Board members and officers, and employees (if applicable) of your chapter will be protected from liability for liabilities, including unpaid debts or

lawsuits against the chapter. Creditors can go after only your chapter's assets, not the personal assets of the people who manage, work for, or volunteer for your chapter. That's not true of an unincorporated chapter.

Benefit #3: Organizational perpetuity

An incorporated chapter is a legal entity separate from individuals who manage it or organize it. It is this separate legal existence that affords the protection from liability, and the ability to exist beyond the involvement of the people who start or who have managed them in the past.

Benefit #4: Helps chapter establish and maintain structure

Forming a nonprofit corporation is not simple but the documents required do so help the chapter to be clear about its mission, think through its operating rules, and develop procedures for decision making. Clear-cut delegation of authority and specific operating rules embodied in the articles of incorporation and the bylaws make running a chapter easier and less divisive.

Benefit #5: Protects chapters participating in advocacy

As nonprofits, chapters may engage only in very limited political advocacy. Advocacy efforts may occasionally draw a nonprofit into an unwanted lawsuit. Incorporating can support directors and officers in defending the lawsuits and protect them from personal liability.

Benefit #6: Employee benefits (for chapters with employees, such as paid chapter administrators)

Becoming incorporated enables chapters to offer employee benefits such as group life insurance, health insurance, a pension plan, etc.

Additional benefits of incorporation

Although these aren't the main reasons chapters form nonprofit corporations, chapters can take advantage of other benefits, including:

- **Special postage rates.** Chapters can apply for and receive a mailing permit that gives them a special reduced nonprofit rate for mailings. This is especially helpful for chapters that will do a lot of solicitation by mail.
- **Discount for services.** Sometimes service providers, including phone and internet companies, offer discounts for nonprofit corporations using their services

- **Free public service announcements.** Nonprofit corporations can make free public service announcements. Chapters can advertise their chapter meeting, event, or Employee Learning Week participation on the radio.

Important considerations

Disadvantages include a lot of paperwork; costs such as hiring a lawyer to prepare your papers; and time and energy to comply with regulatory demands and to grow your chapter.

If the benefits of incorporating outweigh the disadvantages, your chapter may be ready to move ahead.

Applying for nonprofit incorporation

Nonprofit incorporation is very similar to creating a regular corporation except that a nonprofit must take the extra steps of applying for tax-exempt status with the state in which it incorporates and with the IRS.

Nonprofit incorporation usually involves these steps (several of these steps have already been completed by ATD chapters):

- File your "[articles of incorporation](#)" and pay a filing fee.
- Apply for federal and state tax exemptions.
- Create bylaws that will dictate how the chapter is run.
- Appoint an initial board of directors.
- Hold the first meeting of the board of directors
- Apply for any licenses or permits that your chapter will need to operate in your state and local municipality.

Your state's corporate filing division is usually part of the secretary of state's office.

After you have filed all the paper work for nonprofit incorporation in your state, and received a copy of your articles of incorporation, you can move on to submitting your application to the IRS for your federal nonprofit status as a 501(c)(3) corporation.

The forms you must complete for the IRS include:

- IRS Form 818, *User Fee for Exempt Organization Determination Letter Request*
- IRS Package 1023, *Application for Recognition of Exemption*.

[IRS publication 557](#), *Tax-Exempt Status for Your Organization*, provides instructions to complete these forms. You can get all of the forms and Publication 557 by calling 800-TAX-Form, or they can be downloaded from the IRS website, www.irs.gov.

The IRS will review your application and send you a letter indicating that it has approved your nonprofit status. Or, the IRS might ask you for more information. It can also deny your application. If that happens, don't give up; contact a lawyer who specializes in nonprofits.

You may need to apply to your state for tax-exempt status as well. Some states require a separate application to get a state tax exemption; some states are satisfied with your federal tax-exempt status; and in others, you will need to send a copy of your IRS determination letter. To find out what your state requires, contact your [state tax agency](#).