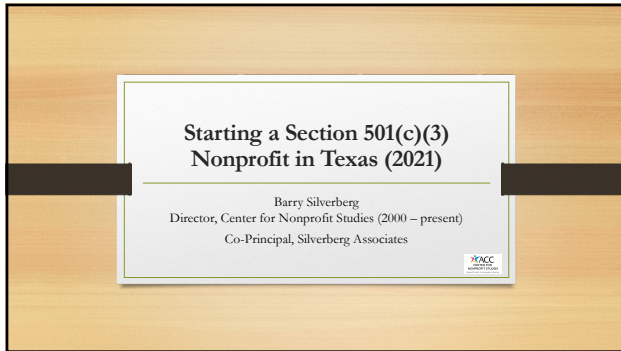


# STARTING A NONPROFIT IN TEXAS



**BARRY SILVERBERG**  
DIRECTOR, CENTER FOR NONPROFIT STUDIES  
CO-PRINCIPAL, SILVERBERG ASSOCIATES

## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)



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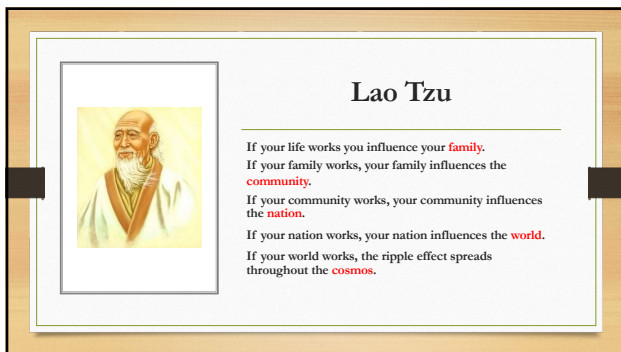
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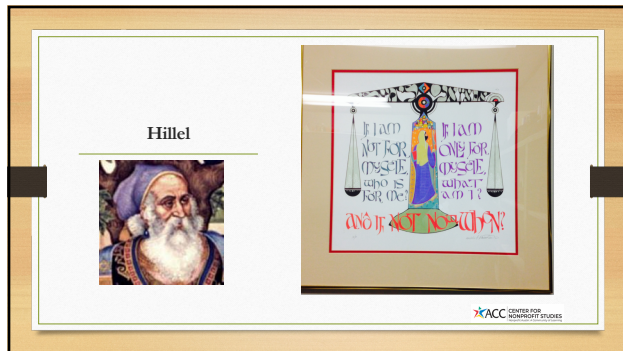
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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)



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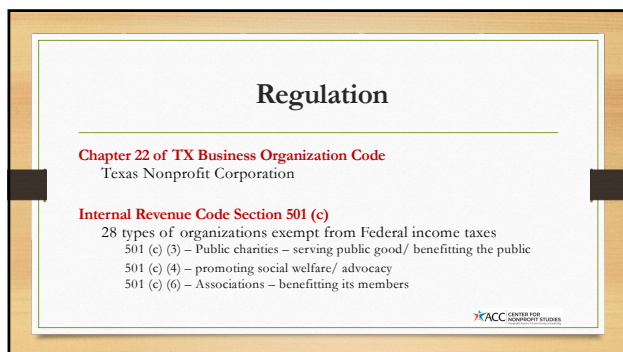
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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)

### Characteristics of 501 (c)(3)

- Purpose
- Ownership
- Control
- Accountability
- Organized for a public purpose and benefit
  - Benefit Classes not Individuals
- Accountable to public not stockholders
- Do not distribute surplus revenue as profits
- Driven by mission to benefit the public = NO Private Inurement
- Volunteers usually NOT paid (except potentially expenses)
- Governed by diverse volunteer board of community members
  - Management v. Governance

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### Who is Who?

#### Governance

- Board of Directors
- the responsibility of monitoring, overseeing and providing direction for the organization's pursuit of its mission

#### Management

- CEO/ Staff
- Ensuring mission is accomplished & all administrative, operational & service functions in place to achieve the strategic directions sought.
- Also serve as experts on the agency purpose, work, clients and community needs.

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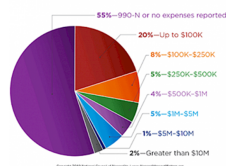
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### 501(c)(3) Charitable Nonprofits by Size (excluding private foundations)

- In Texas, **92,734** nonprofits of which **65,048** are 501(c)(3)s.
- Most 501 (c) (3)'s are small.
- About **6,000** in Greater Austin area



83%  
< \$250K

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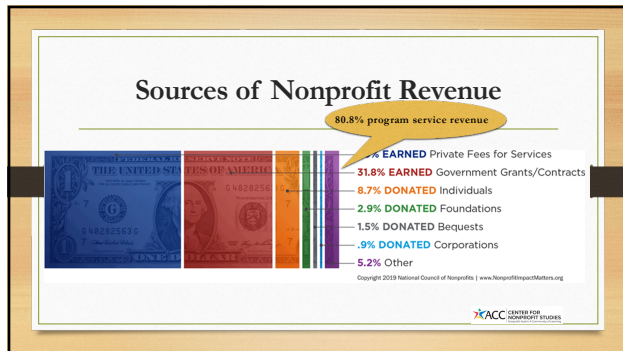
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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)



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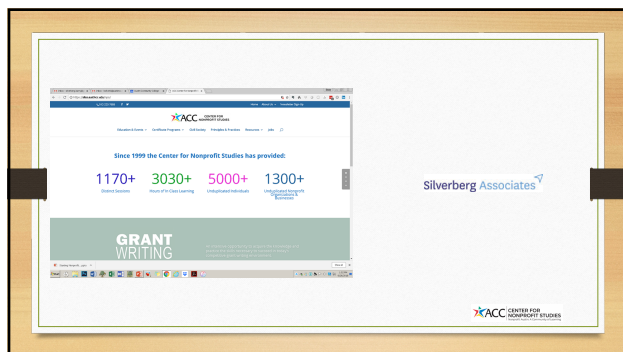
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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)

**Reasons  
NOT  
to start  
a nonprofit**

- To support a needy individual
- To take advantage of the grant money available
- To do things your own way and be unfettered by rules or bureaucratic procedures.



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**Key Questions BEFORE Getting Underway**

- ☐ Is proposed project legal?
- ☐ Is there a demonstrated need?
- ☐ Is mission easily stated?
- ☐ Is partnership with existing entity possible?
- ☐ Can you describe what success looks like?
- ☐ Can you project steps to success?
- ☐ Will others commit needed time and resources?
- ☐ Do you/ your supporters have necessary understanding of how nonprofits structured and how they function?



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**Self-Interest  
Issues**

**Have you  
considered fiscal  
agency?**

- What are your CONTROL needs?
- Why are you doing this?



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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)

### Creating a 501 (c)(3)

<b>Advantages</b> <ul style="list-style-type: none"><li>• Limited liability</li><li>• Structure</li><li>• Perpetuity</li><li>• Legally recognized</li><li>• Ancillary benefits<ul style="list-style-type: none"><li>• Lower postal rates</li><li>• Access to media</li><li>• Presumed credibility</li></ul></li></ul>	<b>Disadvantages</b> <ul style="list-style-type: none"><li>• Loss of control</li><li>• Regulation/ paperwork</li><li>• Start up time/ expenses</li><li>• Different than for-profit</li><li>• Learning curve</li><li>• Legal liability</li></ul>
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### Bylaws: Policies and procedures adopted by Corporation for regulation and management of its affairs

<ul style="list-style-type: none"><li>• Membership rights &amp; responsibilities &amp; meetings</li><li>• Composition of Board of Directors &amp; Officers</li><li>• Attendance/ Meetings/ Quorum</li><li>• Committees</li><li>• Rules of procedure</li><li>• Indemnification</li><li>• Conflict of Interest policy</li><li>• Whistleblowers policy</li></ul>	<ul style="list-style-type: none"><li>• Operations:<ul style="list-style-type: none"><li>• Execution of documents</li><li>• Disbursement of Funds</li><li>• Procurement Policy</li><li>• Record keeping</li><li>• Fiscal Year</li><li>• Audit</li></ul></li><li>• Document Retention &amp; Destruction policy</li><li>• Amendment procedure</li><li>• Dissolution procedure</li></ul>
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### Questions



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**Certificate of Formation**

- 1- Entity name & type
- 2- Registered agent & office
- 3- Management
- 4- Members?
- 5- Purpose – reference 501 (c)(3)
- 6- Supplemental provisions - include termination clause

**Minimum of 3 Board members**

Form 202 at [www.sos.state.tx.us](http://www.sos.state.tx.us)

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**Certificate of Filing**

- 1- Entity name & type
- 2- Registered agent & office
- 3- Management
- 4- Members?
- 5- Purpose – reference 501 (c)(3)
- 6- Supplemental provisions - include termination clause

**Minimum of 3 Board members**

Form 202 at [www.sos.state.tx.us](http://www.sos.state.tx.us)

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**Organizational Meeting**

- 1- Entity name & type
- 2- Registered agent & office
- 3- Management
- 4- Members?
- 5- Purpose – reference 501 (c)(3)
- 6- Supplemental provisions - include termination clause

**Minimum of 3 Board members**

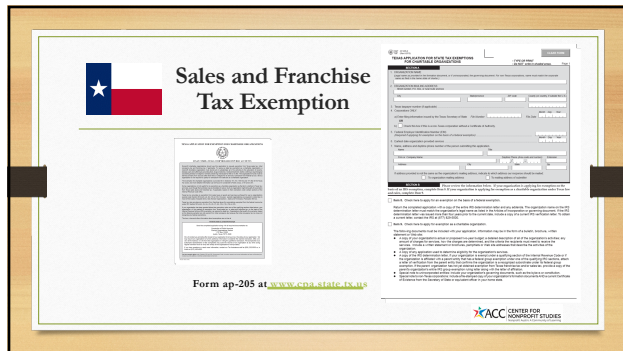
Form 202 at [www.sos.state.tx.us](http://www.sos.state.tx.us)

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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)



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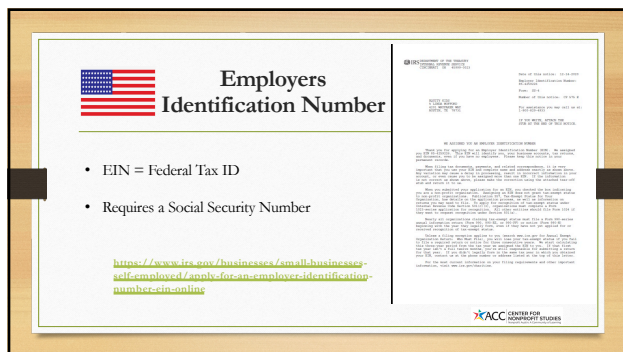
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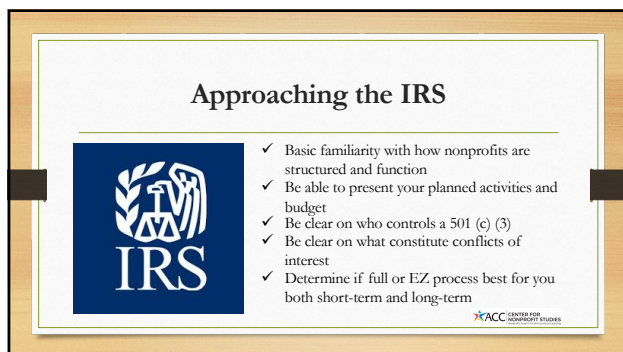
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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)



### Filing Form 1023 or 1023 EZ: Application for Recognition of Exemption

- Organizations seeking exemption under section 501 (c)(3), with few exceptions, such as:
  - Churches, synagogues, mosques and other houses of worship
  - Organizations with gross receipts normally under \$5,000
- Form 1024 used for organizations seeking exemption under sections other than 501 (c) (3)

- Must be organized and operated exclusively for one or more of these purposes:
  - Religious
  - Charitable
  - Educational
  - Testing for Public Safety
  - Literary
  - Scientific
  - Fostering amateur sports competition
  - Prevention of cruelty to children or animals

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### Tests

#### Organizational Test

- ✓ Must not expressly empower organization to engage in non-exempt activity
- ✓ Must provide for proper distribution of assets upon dissolution

#### Operational Test

- ✓ Must engage primarily in activities that further exempt purposes
- ✓ Restrictions on some activities
- ✓ Absolute prohibition on other activities

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### Prohibited or Restricted Activities/ Annual filing of form 990

- Private inurement
- Private benefit
- Lobbying – aka influencing legislation
- Political Campaign Intervention
- Unrelated Business Income (subject to UBIT)
- Failure to file form 990 for more than 3 years

Status	Form to File
Gross receipts normally ≤ \$500,000 Note: Organizations <u>generally</u> to file the e-Postcard <u>annually</u> <u>if</u> the <u>full return</u>	<a href="#">Form 990-EZ</a>
Gross receipts < \$200,000, and Total assets ≤ \$500,000	<a href="#">Form 990-EZ</a>
Gross receipts ≥ \$200,000, or Total assets ≥ \$500,000	<a href="#">Form 990</a>
Private foundation - regardless of financial status	<a href="#">Form 990</a>

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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)

**Form 1023-EZ** Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

**Instructions:**

- Do not enter social security numbers on this form as it may be made public.
- Information about Form 1023-EZ and its separate instructions is at [www.irs.gov/form1023](http://www.irs.gov/form1023).
- Check this box to certify that you have completed the Form 1023-EZ digitally. If you are unable to do so, you must complete the form by mail and attach the required documents to the completed form.

**Requirements:**

- Annual gross receipts \$50K or less
- Total assets \$250,000 or less
- Not a Foreign organization
- Not have ties to terrorism
- Not an LLC
- Not a successor to a for-profit organization

**Additional Information:**

- Simplified application for smaller organizations
- 3 pages v. 12+ pages
- Expected to reduce application backlog
- Approved Forms 1023-EZ are open to public inspection
- \$275 User Fee paid through [www.pay.gov](http://www.pay.gov)

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**Form 1023 Checklist** (Revised December 2017)

**Instructions:**

- Do not enter social security numbers on this form as it may be made public.
- Information about Form 1023-EZ and its separate instructions is at [www.irs.gov/form1023](http://www.irs.gov/form1023).
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**Form 1023 mail in**

**Instructions:**

- Do not enter social security numbers on this form as it may be made public.
- Information about Form 1023-EZ and its separate instructions is at [www.irs.gov/form1023](http://www.irs.gov/form1023).
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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)



### Reviewing form 1023 online version

- **Part I: Identification of Applicant**
- **Part II: Organizational Structure**
- **Part III: Required Organizing Provisions**
- **Part IV: Your Activities**
  - Narrative
  - NTEE Code
  - Who serve – any limitations
  - Family or business beneficiaries
- **Part IV: Continued:**
  - Supporting political candidates or influencing legislation
    - Filing Form 5768 Intellectual property
  - Grants, loans or distributions to organizations
  - Support Foreign organizations
  - Fundraising Plans

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### Reviewing form 1023 online version

- **Part V: Compensation/ Financial**
  - Compensation practices
  - Conflict of Interest Policy & Practices vis-à-vis officers, directors, employees
    - Purchase or sell goods/ services
    - Leases
    - Joint ventures/ partnerships
- **Part VI: Financial Data**
  - Statement of Revenue & Expenses
  - Balance Sheet
- **Part VII: Foundation Classification**
  - Scholarships, fellowships, educational loans

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### Reviewing form 1023 online version

- **Part VIII: Specific Activities**
  - Supporting political campaign/ influence legislation?
  - Gaming activities?
  - **Fundraising sources, plans and geographic reach?**
    - Joint ventures with for-profit?
    - Child care facilities?
  - **Intellectual property ownership?**
    - Acceptance of real estate, autos, boats, etc.?
- **Part IX: Financials**
  - Statement of Revenue and Expenses
  - Balance Sheet
- **Part X: Public Charity Status**
  - Operating outside US in foreign countries?
  - Distributions to other organizations?
  - Distributions to foreign organizations?
  - Scholarships & /or grants?

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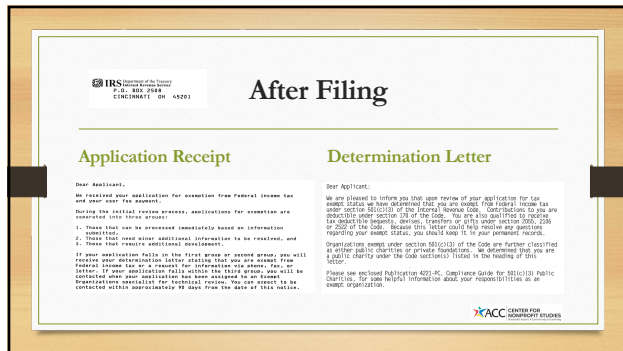
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## Presentation on Starting a Section 501 (c)(3) Nonprofit in Texas (2021)



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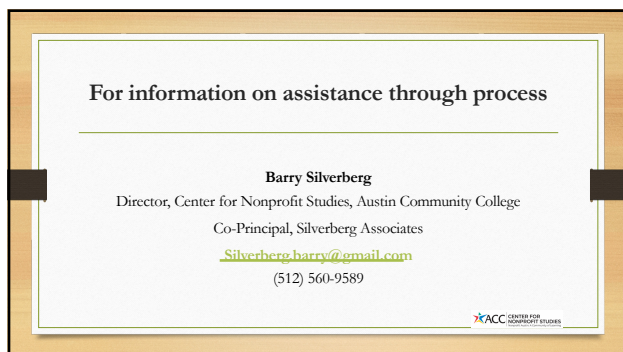
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