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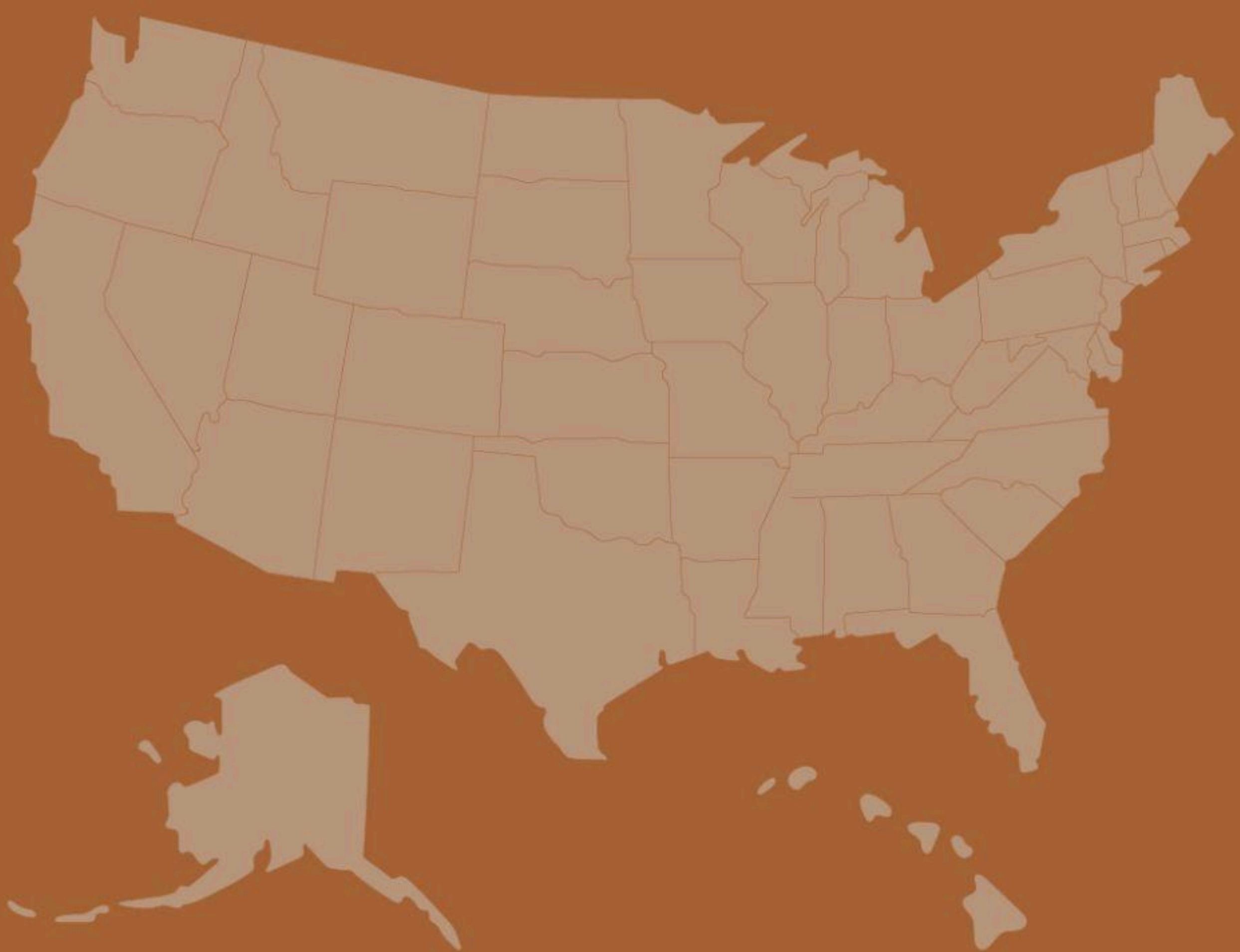

August, 2024

SETTING UP A MEDIA ORGANIZATION IN THE UNITED STATES

A guide to forming nonprofit and for-profit entities

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Introduction

"Should we create an NGO or a company? Is it better to lead a for-profit or nonprofit?"

Photo: REUTERS - Valentyn Ogirenko

Journalists who have launched a project often approach SembraMedia seeking answers about the best legal structure for their media outlet.

To provide this information, SembraMedia partnered with TrustLaw, the Thomson Reuters Foundation's global pro bono legal network, which provides connections with lawyers who offer free support. They connected us with three law firms, and we developed a series of guides focused on three countries: Mexico, Costa Rica, and the United States.

There is no one-size-fits-all formula, as the decision must be tailored to the needs and circumstances of each media outlet. This diversity is one of the most important aspects SembraMedia has identified throughout its work in the digital media ecosystem. Each country has unique social, economic, legal, and financial particularities, especially when it comes to creating news organizations. The aim of this guide is to help you learn about your options and make decisions that consider these factors.

"This TrustLaw guide offers key details and context to help entrepreneurial journalists in the United States feel well-informed and organized when making legal structure decisions for their media organizations," says Natalie Van Hoozer, the U.S. ambassador for SembraMedia.

Part of the work SembraMedia does through its programs, virtual classes, guides, and resources is to support media founders and leaders in making strategic decisions to find a sustainable business model. We hope this guide helps you find the best option to formalize your news organization according to your circumstances, options, and risks.

For each type of organization, you will find:

- General information
- Tax burdens
- Establishment times
- Benefits
- Costs
- Regulatory authority
- Treatment for foreigners
- Donations and funding

About TrustLaw

The Thomson Reuters Foundation is the corporate foundation of Thomson Reuters, the global news and information services company. As an independent charity, registered in the UK and the USA, we leverage our media, legal and data-driven expertise to strengthen independent journalism, enable access to the law and promote responsible business. Through news, media development, free legal assistance and data intelligence, we aim to build free, fair and informed societies.

TrustLaw, an initiative of the Thomson Reuters Foundation, is the world's largest pro bono legal network. Working with leading law firms and corporate legal teams, we facilitate free legal support, ground-breaking legal research and resources for non-profits and social enterprises in over 190 countries. By spreading the practice of pro-bono worldwide, TrustLaw wants to strengthen civil society and drive change. If you have ideas for resources we could develop or legal research projects that would be of assistance after reading this guide, please contact us. If you are a non-profit or social enterprise in need of legal support, you can find out more about the service here and join TrustLaw for free.

About SembraMedia

SembraMedia is a 501(c)3 nonprofit organization with offices in the United States and Argentina. Our mission is to empower media leaders to publish valuable information independently and make a positive impact on the communities they serve.

Since 2015, SembraMedia has helped journalists and other social entrepreneurs build stronger media organizations through business and technical training, market intelligence, networking opportunities, consulting, and financial support.

Our work is driven by a team of journalists, consultants, and academics with deep knowledge of the political, economic, and media markets where they work. This diverse team includes ambassadors who support a regional network of nearly 1,000 digital publishers in Latin America, Spain, Canada, and the United States.

Acknowledgments and disclaimer

This report is based on the legal research provided by pro bono law firms, connected through TrustLaw, the global pro bono legal network of the Thomson Reuters Foundation. The Thomson Reuters Foundation and SembraMedia would like to acknowledge and extend their gratitude to the participating law firm, which contributed time and expertise on a pro bono basis to make this report possible.

The Thomson Reuters Foundation and the supporting law firm mentioned above are not responsible for actions or omissions arising because of having relied on any pro bono legal analysis used in the report or any inaccuracies contained herein. The contents should not be understood as a reflection of the position of the Foundation or the contributing law firm or lawyers.

This report was developed between January and May 2024 under the regulations in force at that time. If you read this guide at a later date, we encourage you to check the validity of such regulations.

Presentation

Choosing a legal structure is an important step for all small business owners. This guide (this “Guide”) is designed to inform media entrepreneurs of certain of the many considerations of building, forming and maintaining their business’ legal structure in the United States.

In many cases, a small business owner will want to form an entity to legally separate the business from the individual owner. This Guide begins with a discussion of key considerations for small media business owners, then follows with steps on how to form a legal entity as well as the requirements to maintain such legal entity. Outlined herein are specific examples of formation, maintenance, and governance procedures in the states of California, Delaware, Florida, Illinois, New York, and Texas. For the aspiring media entrepreneur, this Guide also addresses certain important legal issues media entrepreneurs may encounter in their businesses after formation, as well as a discussion as to potential benefits and incentives for media entrepreneurs provided by the federal and state governments. Many of these considerations arise from state and federal statutes that create statutory requirements for media companies and small businesses.

I. Business Intent

As a threshold matter, media business entrepreneurs should first determine the primary purpose of their intended business. If the primary purpose of forming a business for a media entrepreneur is to generate income for themselves (and not just provide themselves with a salary) or to eventually sell the business, then it is prudent to form a for-profit organization. However, if the primary purpose for forming a business is to accomplish a charitable purpose and not to generate income or grow a large income-generating company, then a media entrepreneur might consider forming a non-profit organization.

Based on this preliminary determination, we encourage you to read through the applicable sections of this Guide to help inform you of the various considerations media entrepreneurs should review when forming a for-profit or non-profit organization.

II. Legal Structure Overview

A. Why Form a Business Entity?

The following section outlines several key legal considerations with respect to forming a business, regardless of whether the business is a non-profit or for-profit organization. While there is no "one size fits all" approach, a review of this Guide may assist you in weighing the various legal considerations against your intended goals. For more information with respect to specific legal entities and their various advantages and disadvantages, please see Section B below, entitled "Overview of For-Profit and Non-Profit Organizations". For a discussion of the administrative obligations of forming and maintaining a business entity, please see Sections III and IV below, entitled "Legal Structure Formation" and "Legal Structure Operation/Maintenance". For a discussion of certain U.S. federal income tax considerations relating to the different types of legal entities, please see Section V below, entitled "Certain U.S. Federal Income Tax Considerations".

1. Limitation of Liability; Protection of Personal Assets

Media entrepreneurs should carefully consider whether it is in their best interests to take on the new business' debts and obligations. Business debts and obligations may range from something as simple as a utility bill to something as complicated as a lawsuit. As discussed further in this Guide, not all legal entities offer the same level of personal protections between the obligations and debts of a business and the owner's personal assets. While it may seem logical to think that all businesses want to limit their liability, for some small businesses, there are administrative and financial obligations that may make the limitation of liability overly burdensome.

Owners of and investors in companies that offer limited liability protection are generally only legally liable for the amount the owner or investor contributed to the business. This means that the owners' personal assets are generally not exposed to risk from the company's creditors. For example, in a limited liability entity ("LLC") or corporation, if the owner invests $10,000 in the business, such amount represents the maximum amount the owner stands to lose, assuming that the owner otherwise complies with certain legal formalities. In contrast, entities such as sole proprietorships and general partnerships would not offer any limitations on liability for an owner. An owner would be personally liable for all the debts and obligations of the business. Without the limitation of liability, creditors may seek to recuperate costs directly from the owner's personal assets, which may exceed the initial $10,000 investment, and the owner may be liable for all losses of the company incurred during the course of business.

If the business a media entrepreneur intends to create involves a high level of risk (e.g., your business expects to incur significant debts or otherwise be subject to legal disputes), the limitation of liability is an important consideration. However, if the media business operations would have little to no external debt and a low risk of exposure to significant obligations, the costs of limiting liability may be outweighed by the administrative burdens that the government imposes on business entities with limited liability. For example, entities that offer limited liability protection require registration with the state and have annual reporting and filing fees. In contrast, the formation of a sole proprietorship or general partnership requires no state filing or annual filing fees (other than with respect to any applicable taxes). For some small businesses, these administrative burdens and costs may outweigh the benefits of limiting liability.

2. Management and Control

Another important consideration for media entrepreneurs is the structure for the management and ownership of the business. The initial owner(s) of a business do not always maintain management and control of the business as the business grows. For example, capital raising activities may result in the addition of new stockholders, which would lead to the dilution of the ownership rights of the existing owner(s). For media businesses which may need funding from outside investors or lenders, certain business structures, such as LLCs and corporations, provide flexibility for media entrepreneurs to grow and adapt their business. In contrast, however, additional growth and investment may require a media entrepreneur to concede certain control and voting rights over their business, as additional investors will likely want a say in how the business is run in the future. Balancing growth and control is something all business owners must consider. A proper legal structure from the outset will help you navigate and grow your start-up.

3. Certain U.S. Federal Income Tax Considerations

Media entrepreneurs also should carefully consider the tax implications of the various structures for operating their business. As discussed in more detail below, the tax consequences to the media entrepreneur and the business can vary significantly depending on the form in which the business is conducted and, and if conducted by an entity, the U.S. federal income tax classification of such entity.

Limitation of liability, management and control and U.S. federal income tax are a few of the many considerations that may confront a new media business. The sections below describe various legal structures a media business can take, including the advantages and disadvantages of each legal entity.

B. Overview of For-Profit and Non-Profit Organizations

Choosing the right entity is an exciting and important step in the beginnings of any venture. There are a variety of legal for-profit and non-profit organizations, each with its own specific advantages and disadvantages. The following is intended to help media entrepreneurs think through some of the most significant considerations related to business organization selection. The legal structure that you choose will inform your business' operational parameters, including the roles and responsibilities of business principals, legal protections, financing and growth opportunities, and parameters of business activities.

1. For-Profit Organizations

a) Sole Proprietorships. A business owner who does not form any legal entity is known as a "sole proprietorship." A sole proprietorship is a business owned and operated by a single individual, and a sole proprietorship is the most common legal structure for new small businesses operated by one person.

(1) Advantages. Sole proprietorships are the least complicated form of legal structure and the least expensive to organize (for example, no formal paperwork is needed to form a sole proprietorship). The owner has the power to make all decisions for the business and can sell or transfer the business to a new owner if desired.

(2) Disadvantages. A sole proprietorship is not protected by limited liability, which means the owner is personally responsible for all the debts of the business and their personal assets may be at risk if the business is unable to meet its financial obligations. It can also be difficult to raise additional funding from outside investors for the business given that there are no economic interests in the business that can be exchanged.

Unincorporated Association. Generally, an unincorporated association is an organization consisting of two or more members who join by mutual consent for a common purpose, whether organized for profit or not. A common example of an unincorporated association is when a group of neighbors decides to group together to help raise funds to keep a local community center open. In certain states, including Delaware, an unincorporated association can also be a general partnership, where two or more people join to conduct business for a profit.

(i) Advantages. Unincorporated associations are simple to set up. Once a group of individuals decides to band together for a common purpose, no further steps, such as registration with the state or formal paperwork, are necessary. The profits and losses of the association are reported on each owner's personal income tax return. The members of the association have the power to make all operational decisions.

(ii) Disadvantages. An unincorporated association is not protected by limited liability. Therefore, the members are personally responsible for all the debts of the business and their personal assets may be at risk if the business is unable to meet its financial obligations. Further, unless a state's statute provides otherwise, an unincorporated association cannot hold or receive property, or sign contracts, in its own name. It can also be difficult to raise additional funding from outside investors for the business given that there are no economic interests in the business that can be exchanged.

Limited Liability Companies. An LLC is a separate legal entity, meaning that once formed, it exists separately from the people who create it. An LLC offers the operational benefits of a sole proprietorship or partnership and the limited liability protection of a corporation. Each owner in an LLC, is called a "member."

(i) Advantages. An LLC member's personal liability for the LLC's debts or judgments is typically limited to the amount of that member's investment in the LLC. Compared to corporations, LLCs are not bound to the same strict corporate formalities. Many states provide LLCs with broad governance rights, giving its owners wide discretion as to how to handle the internal affairs of the business. For example, an LLC may be managed by the sole member, multiple members, or a board of directors, whereas corporations formed under state law are often subject to prescriptive requirements as to how corporate actions are approved by management, the corporation's board of directors and its shareholders.

(ii) Disadvantages. Having the flexibility of an LLC also has drawbacks. Members in an LLC must ensure they treat the LLC as an entity with a separate existence from their personal affairs. Unlike corporations which must maintain separate records and hold yearly meetings, there are no such requirements for LLCs. However, if an LLC does not maintain good recordkeeping, fails to maintain its assets as separate from its members, or conducts personal transactions on behalf of the members using the LLC's name, courts may deny limited liability to the members; therefore, in a dispute between the LLC and a third party, the LLC's member's personal assets may be at risk. There are also fewer statutory requirements for LLCs than corporations. While this may be an advantage in some scenarios, it means that safeguards built into statutes, like those related to corporations, are not present for LLCs. Therefore, there is additional risk for LLC members in the case of disputes amongst members and third parties. To combat this risk, it is recommended that LLC members draft a comprehensive limited liability company agreement to clearly define the roles of members and officers, voting, transfer of membership interests, and other decision-making processes. Although not required by law, drafting a comprehensive limited liability company agreement further enforces the separate legal existence of the LLC from its members and provides an important safeguard for any future disputes amongst members or between the LLC and third parties.

Corporations. A corporation is a separate legal entity, meaning that once formed, it exists separately from the people who create it. Stockholders own the corporation and a board of directors, who are elected by the stockholders, oversee the corporation on behalf of the stockholders. The board of directors appoint corporate officers (who may also serve as directors) to manage the day-to-day operations of the business. State laws require a corporation to adhere to certain formalities, including, adoption of governing documents (an Articles of Incorporation and Bylaws), maintenance of corporate records, procedures for stockholder and board meetings, and election of the members of a board of directors. These formalities must be followed to preserve the corporation's separate legal status.

(i) Advantages. Because a corporation and its stockholders are separate legal entities, a stockholder's liability for the corporation's debts or judgments is normally limited to the amount of that stockholder's investment in the corporation. A corporation is also the most preferred legal structure to raise a large amount of capital from the public through the sale of stock.

(ii) Disadvantages. The process of incorporation involves more time and money than other forms of organization. Maintaining a corporation is also more administratively burdensome; a corporation must follow certain formalities, including holding regular board and stockholder meetings, even if the corporation is owned and managed by a single individual. Additionally, tax treatment of profits may not be as favorable for corporations. Corporate profits may be subject to "double taxation" – a corporation must pay taxes on its income as the first level of taxation, and to the extent such income is distributed to stockholders as dividend, the individual stockholders must pay taxes again as part of their income.

Limited Partnerships. A limited partnership is a business with two or more owners in which at least one of the partners has limited liability protection and is thus a "limited partner." Each partner who does not have limited liability protection is a "general partner." Each general partner has the same rights and obligations as partners in a general partnership, which means that each general partner remains personally responsible for the limited partnership's liabilities. Typically, limited partnerships are utilized as an investment vehicle and are more often suited for non-media-related businesses.

(1) Advantages. A limited partner's personal liability is limited to the amount of their investment in the limited partnership. A general partner manages and controls the business, which benefits from the financial contributions of the limited partner(s). Partnerships often raise capital by selling additional limited partnership interests in the business. In addition to fundraising flexibility, limited partnerships often have fewer record-keeping and reporting requirements, compared to LLCs and corporations.

(2) Disadvantages. A limited partner's participation in management or control of the business is fairly limited. A general partner has personal exposure and is liable for the debts and obligations of the limited partnership. Typically, a media entrepreneur forming a limited partnership structure, will serve as the general partner or control the entity that serves as the general partner.

2. Non-Profit Organizations

A non-profit organization is an entity organized for purposes other than generating profits for its directors, officers, or members.[1] Non-profit organizations are generally dedicated to furthering an articulated social cause and to provide a benefit to the public. A non-profit can take the form of an unincorporated association, LLC, or a corporation. Please refer to the discussion above for a review of unincorporated associations, LLCs and corporations, including important considerations when forming each.

An entity formed as a non-profit organization under state law may make an organization eligible for certain benefits, including possibly state tax exemptions. However, a legal non-profit organization does not automatically grant exemption from federal income tax. To be tax-exempt, most organizations must satisfy a number of requirements and apply for recognition of exemption from the IRS, as described below in "Certain U.S. Federal Income Tax Considerations – Tax-Exempt Organizations".

e) Advantages. Similar to incorporated for-profit organizations, the founder of an incorporated non-profit organization (an LLC, LP and Corporation) is also considered separate from the non-profit organization, and the debts, lawsuits and fines of the non-profit organization are considered its own.[2] This will ensure separation between an entrepreneur's personal assets, such as their home, from the assets and liabilities of the non-profit. Incorporated non-profit organizations also have the benefit of enjoying access to discounted services. For example, if a non-profit has interest in setting up at a conference or fair to share its message, often event hosts will offer reduced booth rates. Non-profit organizations also get charged lower rates at the United States Postal Service and are eligible to receive free legal advice from legal firms.

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[1] *See* Texas Secretary of State. Nonprofit Organizations. https://www.sos.state.tx.us/corp/nonprofit_org.shtml; N.Y. Not-for-Profit Corporation Law §201; I.R.S. Exemption Requirements -501(c)(3) Organizations. (2024, January 29). https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations.

[2] Note that individuals may still be held accountable if they act illegally or unethically behind the shield of a non-profit organization and in turn harm the non-profit.

f) Disadvantages. Non-profit organizations are beholden to the statutes of the state under which they were formed. This will mean paying careful attention not only to the formation requirements for the non-profit, but also the retention of books and records, annual reporting requirements and charitable solicitation mandates. Further, the founder of unincorporated non-profit association is subject to personal liability for the debts, lawsuits and fines.

A further discussion on the advantages and disadvantages of tax-exempt organizations is discussed under Section V.B, entitled “Tax-Exempt Organization”.

III. Legal Structure Formation

Photo: REUTERS - Juan Carlos Ulate

Once you have decided the intent of your business, you must also consider where the business entity should be formed. You are not required to form a business entity in the state where it operates, but most small business owners do so. In deciding where to form the entity, three main factors should be considered: (i) the physical location of the business, (ii) the cost of forming in the state of operation versus the cost of qualifying to do business in a state other than the state of operation, and (iii) the advantages and disadvantages of each state's business entity laws.

If a media entrepreneur anticipates that the business will operate primarily within a single state, often the most simple and cost-effective solution is to form a business in the state in which it operates. If a media entrepreneur forms a business in one state and the business operates in another state, the business will likely need to be registered in the state in which it operates and could be subject to tax in both states. In some cases, states will impose taxes or fees on a business that exists in the state, even if it is not doing business there.

If a media entrepreneur anticipates that the business will grow to operate in more than one state, there may be benefits to forming the business in a state with more favorable corporate laws than the state in which the business currently operates. Delaware is generally seen as having some of the most well established corporate laws in the nation and is a frequent choice for forming a business if the home state is not used. Benefits of incorporating in Delaware include:

- It is fast and easy to form a business entity with low formation fees and low annual franchise taxes;
- Delaware maintains a separate court system, its "Court of Chancery," for businesses; and

- Delaware does not require the names of LLC members or board members to be disclosed to the Secretary of State, therefore their names are not part of the public record, maintaining privacy.

A. For-Profit Organizations

1. Formation Requirements & Corporate Governance Matters

a) Sole Proprietorship. A sole proprietorship is created without formation documents unless the owner intends to operate the business under a fictitious business name. If the owner is operating the business under a name other than his or her own full first and last legal names, the name of the business, referred to as a "trade name," must be registered with the Secretary of State for a fee of $25.00 (current as of the date hereof, in the case of the State of Delaware).

b) General Partnership. Like a sole proprietorship, no formation documents are required to create a general partnership.[3] If the partners are operating the business under a name other than the first and last names of the partners, the trade name must be registered with the Secretary of State (in the case of the State of Delaware). Although it is not required, it is recommended that a general partnership prepare a written partnership agreement that specifies how the partnership will operate and each partner's responsibilities.

c) Limited Partnership. Limited partnerships are created by filing a Certificate of Limited Partnership with the Secretary of State (in the case of the State of Delaware). A Certificate of Limited Partnership is required to contain certain information such as the name of the limited partnership, the name and address of the registered agent, and the name and address of each general partner. As with general partnerships, it is recommended that a limited partnership prepare a written partnership agreement that outlines the business' structure and each partner's responsibilities.

d) Limited Liability Company. An LLC is created by filing a Certificate of Formation or Articles of Organization with the Secretary of State (in the case of the State of Delaware). Each state has its own requirements as to information that needs to be provided in its filings, but generally, filing documentation is required to contain the name of the company and a registered agent's name and address. Although not legally required, it is recommended that the member(s) prepare and adopt a written operating agreement that outlines the business' structure and each member's responsibilities, even if the LLC is owned and managed by a sole member. An operating agreement helps an LLC by guarding the limited

[3] However, if you do business in California as a "foreign" partnership (for example as a Florida partnership), the foreign partnership must be registered with the Secretary of State of California by filing a Statement by Foreign Partnership on Form LL-27. Note that in the United States, registering to do business in a state other than the state of organization is typically referred to as "foreign registration". Foreign does not necessarily refer to having an "international" presence but can also refer to conducting business in one state, while being incorporated in another.

liability status of its member(s), clarifying financial and management responsibilities, and ensuring that the business is governed by the rules established by the members rather than default statutory rules under applicable state law. Operating agreements are internal documents and generally not available to the public.

e) Corporations. Corporations are created by filing a certificate of incorporation or articles of incorporation with the Secretary of State (in the case of the State of Delaware) (herein referred to as a "Articles of Incorporation"). An Article of Incorporation is the primary document governing the corporation, and amending the Certificate of Incorporation generally requires votes from both the board of directors and stockholders of the corporation (while Bylaws can generally be modified by the board of directors). Each state has its own requirements as to information that needs to be provided in its filings, but generally, a Certificate of Incorporation is required to contain the name of the corporation, the name and address of the registered agent, information regarding the authorized shares of the corporation's stock, and information regarding the incorporator.

After filing the Certificate of Incorporation with the Secretary of State, the incorporator identified therein will elect the initial board of directors, who will manage the business and affairs of the corporation, and then the incorporator will resign. Once the board of directors of the corporation is formed, the board of directors will adopt Bylaws and may take other actions needed to manage the corporation, including electing officers, setting a fiscal year, and issuing stock certificates to the stockholders of the corporation. These actions are often accomplished through an action by written consent rather than a formal meeting. Bylaws govern the internal affairs of the corporation. The board of directors usually adopts Bylaws at its first meeting (or by acting by written consent instead of an actual meeting). Bylaws are not filed with the Secretary of State and, unless the corporation is publicly traded, are not available to the public.

In addition to the Certificate of Incorporation and Bylaws, a corporation should maintain organizational records, which may include, but are not limited to, resolutions of the board of directors, tax filings under state and federal law, agreements of the corporation, licenses, permits, and other government filings.

Comparison Of For-Profit Formation Requirements In Certain Jurisdictions[4]

	Corporation	Limited Liability Company	Limited Partnership
California	(a) Incorporation documents to be filed: (i) Articles of Incorporation; and (ii) Statement of Information (due within 90 days after filing the Articles of Incorporation) (b) Where to file: Secretary of State (c) Filing fees: $125 (d) Turnaround time (for routine service): 7+ business days	(a) Formation documents to be filed: (i) Articles of Organization; and (ii) Statement of Information (due within 90 days after filing the Articles of Organization) (b) Where to file: Secretary of State (c) Filing fees: $90 (d) Turnaround time (for routine service): 7+ business days	(a) Formation documents to be filed: Certificate of Limited Partnership (b) Where to file: Secretary of State (c) Filing fees: $70 (d) Turnaround time (for routine service): 7+ business days
Delaware	(a) Incorporation documents to be filed: Certificate of Incorporation (b) Where to file: Secretary of State (c) Filing fees: Minimum $89 (varies based on number of authorized shares) (d) Turnaround time (for routine service): 4-5 business days	(a) Formation documents to be filed: Certificate of Formation (b) Where to file: Secretary of State (c) Filing fees: $110 (including $40 Courthouse Municipality Fee) (d) Turnaround time (for routine service): 7+ business days	(a) Formation documents to be filed: Certificate of Limited Partnership (b) Where to file: Secretary of State (c) Filing fees: $200 (d) Turnaround time (for routine service): 7+ business days
Florida	(a) Incorporation documents to be filed: Articles of Incorporation (b) Where to file: Department of State (c) Filing fees: $70	(a) Formation documents to be filed: Articles of Organization (b) Where to file: Department of State (c) Filing fees: $125 (including Designation and Acceptance of Registered Agent)	(a) Formation documents to be filed: Certificate of Limited Partnership (b) Where to file: Department of State (c) Filing fees: $1,000 (including $35 for appointment of registered agent)

[4] The information contained herein may change from time to time.

	(d) Turnaround time (for routine service): 5-7 business days	(d) Turnaround time (for routine service): 5-7 business days	(d) Turnaround time (for routine service): 5-7 business days
Illinois	(a) Incorporation documents to be filed: Articles of Incorporation (b) Where to file: Secretary of State (c) Filing fees: $150 (*plus* a minimum franchise tax of $25) (d) Turnaround time (for routine service): 20 business days	(a) Formation documents to be filed: Articles of Organization (b) Where to file: Secretary of State (c) Filing fees: $150 (d) Turnaround time (for routine service): 20 business days	(a) Formation documents to be filed: Certificate of Limited Partnership (b) Where to file: Secretary of State (c) Filing fees: $150 (d) Turnaround time (for routine service): 20 business days
New York	(a) Incorporation documents to be filed: Certificate of Incorporation (b) Where to file: Department of State (c) Filing fees: $125 (d) Turnaround time (for routine service): 2-4 weeks	(a) Formation documents to be filed: (i) Articles of Organization; and (ii) Certificate of Publication (including Affidavit of Publication)[5] (b) Where to file: Department of State (c) Filing fees: $250 (including filing of Affidavit of Publication) (d) Turnaround time (for routine service): 2-4 weeks	(a) Formation documents to be filed: (i) Certificate of Limited Partnership; and (ii) Certificate of Publication (including Affidavit of Publication)[6] (b) Where to file: Department of State (c) Filing fees: $250 (including filing of Affidavit of Publication) (d) Turnaround time (for routine service): 2-4 weeks
Texas	(a) Incorporation documents to be filed: (i) Certificate of Formation; and	(a) Formation documents to be filed: (i) Certificate of Formation; and	(a) Formation documents to be filed: (i) Certificate of Formation – Limited Partnership; and

[5] New York has a publication requirement. Within 120 days after the effectiveness of the Articles of Organization for a New York limited liability company (LLC), a copy of such Articles of Organization or a notice containing the substance thereof must be published once a week for 6 successive weeks in 2 newspapers in the county in which the LLC's office is to be located. The newspapers are to be designated by the County Clerk in the county of the LLC's office. N.Y. Ltd. Liab. Co. Law § 206.

[6] New York has a publication requirement. Within 120 days after the effectiveness of the Certificate of Limited Partnership for a New York limited partnership (LP), a copy of the Certificate of Limited Partnership or a notice containing the substance thereof must be published once a week for 6 successive weeks in 2 newspapers in the county in which the LP's office is to be located. The newspapers are to be designated by the County Clerk in the county of the LP's office. N.Y. Revised Limited Partnership Act § 121–201.

	(ii) Acceptance of Appointment and Consent to Serve as Registered Agent (voluntary filing) (b) Where to file: Secretary of State (c) Filing fees: $300 (d) Turnaround time (for routine service): 30 business days	(ii) Acceptance of Appointment and Consent to Serve as Registered Agent (voluntary filing) (b) Where to file: Secretary of State (c) Filing fees: $90 (d) Turnaround time (for routine service): 30 business days	(ii) Acceptance of Appointment and Consent to Serve as Registered Agent (voluntary filing) (b) Where to file: Secretary of State (c) Filing fees: $750 (d) Turnaround time (for routine service): 30 business days

Finance & Accounting Matters. Applying for a bank account is necessary if a media entrepreneur forms a separate legal entity. Banking institutions will expect to see (i) that the board of directors or other governing body of the company approves the opening of a bank account (and authorizes one or more of its officers or other representatives to open and manage the bank account) at its first meeting (or by taking action by written consent instead of an actual meeting), (ii) documentation of the business' U.S. taxpayer identification number for an entity (an employer identification number or "EIN") a 9-digit number issued by the U.S. taxing authority, the Internal Revenue Service (the "IRS") to identify the company for tax purposes,[7] and (iii) formal adoption of the company's fiscal year for accounting purposes.

B. Non-Profit Organizations

1. Formation Generally

Before forming a non-profit organization, you must determine which state to form your organization. Both non-profit and for-profit entities are governed by the laws of the state in which they are formed. In general, non-profit organizations are formed as corporations under state law (i.e., as either an "Inc." or a "Corp."). While only recognized expressly by statute in a minimal number of states, an LLC can generally be treated as a tax-exempt organization (as defined below) so long as it obtains federal tax-exempt status by complying with certain IRS requirements, as described below in "Certain U.S. Federal Income Tax Consideration – Tax Exempt Organizations". However, this federal tax-exempt designation does not necessarily mean that the LLC will be recognized as exempt from state taxation by its state of formation or organization. Currently only Minnesota, Kentucky, North Dakota and Tennessee recognize non-profit LLCs as a legal entity. Alabama, Arkansas, California, Colorado, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Nevada, North Carolina, Pennsylvania, Texas, Wisconsin, and Wyoming all recognize unincorporated non-profit associations and have adopted statutes governing these entities. The laws governing the formation and maintenance of a non-profit will vary between states, but each state will provide certain guidelines for formation including: (a) what must be included in the Articles of Incorporation, (b) the fiduciary duties of the organization's directors or members, and (c) available protections against legal liability for officers, directors and volunteers. While basic fiduciary duties are described under Section III.B.2, entitled "Board of Directors and Members". we recommend that media entrepreneurs discuss specific duties applied in each state with their legal advisors.

Determining where to form a non-profit will depend on several factors. Most importantly, a media entrepreneur may consider the state where they intend to conduct most of their activities. However, you might consider the additional costs for applying to do business as a foreign organization if you intend to conduct activities in several states. Further, you need to be aware of state-specific charitable solicitation rules associated with seeking donations which are

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[7] For a description of the process of applying for and obtaining an EIN, please see Section III.B.4 below.

discussed in detail below in Section III.B.7, entitled “Charitable Solicitation Registration”.

Once a media entrepreneur has decided to form a non-profit organization that will apply for exemption from federal income tax, they will need to (i) pick a name for their entity, (ii) assemble a board of directors, (iii) draft bylaws, (iv) draft and file the Articles of Incorporation and draft corporate policies (e.g., conflict of interest policy), (v) obtain an EIN from the IRS, (vi) file the appropriate application with the IRS to apply for federal tax-exempt status, and (vii) file state and local tax-exemption applications and registrations, if relevant. While we discuss the steps for forming a non-profit organization at a high-level in this Guide, we urge media entrepreneurs to reach out to their legal and tax advisors for personalized guidance to ensure compliance with all applicable laws.

2. Board of Directors and Members

Before establishing a non-profit organization, a media entrepreneur will want to determine whether the non-profit organization will have members or elect to have a board of directors. Most non-profit organizations elect to have a board of directors. Where a non-profit organization contains a board of directors, the board of directors makes all major decisions on behalf of the company, while day-to-day operations will be driven by the officers of the company. The board of directors of a non-profit organization is responsible for ensuring that the organization fulfills its mission, as stated in the organization’s Articles of Incorporation. The board’s duties also include ensuring that the non-profit organization’s assets are well-managed. It is recommended that non-profit organizations recruit board members with the commitment, skills and expertise needed to fulfill the organization’s purpose while also understanding legal, accounting and business compliance requirements. The number of directors on the board of a non-profit organization is generally flexible and is fixed by either the Articles of Incorporation or Bylaws.[8] Non-profit organizations electing to have members with a right to vote are known as “member-driven” non-profits. Members of a member-driven non-profit organization typically have the right to elect or remove directors and officers and vote on major events such as mergers and dissolution.

Like for-profit corporations, the directors of a non-profit organization are also subject to basic fiduciary duties. These duties are standards imposed by state law, but generally include the duty of care, duty of loyalty and the duty of obedience. The duty of care requires that a director be fully and adequately informed, and to act with care, when making decisions on behalf of the non-profit organization. The duty of loyalty requires a director to act and make decisions in the best interest of the non-profit organization and not in the director’s personal interest. The duty of obedience requires a director to understand and promote the non-profit organization’s goals and mission. Unlike the duties of the directors of a for-profit organization, which are owed to stockholders, the duties of the directors

[8] California requires a board consist of at least one person (Cal. Corp. Code § 5151(a)). The statutes of Florida, Illinois, New York and Texas require at least three directors (Fla. Stat. § 617.0803; 805 Ill. Comp. Stat. § 105/108.10(a); N.Y. Not-for-Profit Corp. Law § 702(a); and Tex. Bus. Orgs. Code Ann. § 22.204.).

of a non-profit organization are owed to the non-profit organization itself, the beneficiaries of the non-profit's activities and the donors of the non-profit.

3. Bylaws and Articles of Incorporation

Forming a non-profit organization is similar to forming a for-profit corporation. The entity must designate an incorporator, a person who executes the Articles of Incorporation and takes the initial steps to organize the non-profit. The incorporator can be the founder, an attorney or a third party. Similar to a for-profit organization, the formation requirements for a non-profit organization vary by state. However, there are general requirements that apply regardless of the state of formation. The non-profit organization will need to file formation documents, which include (i) an article of incorporation, (ii) Bylaws, and (iii) organizational resolutions, which approve among other topics, electing the initial board of directors and officers and adopting the Bylaws and any corporate policies.

a) Articles of Incorporation. The Articles of Incorporation is the primary document that entities use to establish their corporate existence. The articles of incorporation is filed with a state's secretary of state and is required for an organization to be a legally organized entity. Think of the Articles of Incorporation as the constitution of the corporation, providing a broad framework for the non-profit's establishment. For a tax-exempt organization (as defined below), the Articles of Incorporation will generally state the organization's exempt purpose(s), which are limited to one or more of the exempt purposes set forth in section 501 of the U.S. Internal Revenue Code of 1986, as amended (the "IRC"). The Articles of Incorporation will generally also permanently dedicate the organization's assets to the exempt purpose and state that, upon dissolution, any remaining assets will generally be used exclusively for exempt purposes. The Articles of Incorporation will typically state that no part of the earnings of the non-profit organization will inure to the benefit of any private shareholder or individual.

b) Bylaws. By contrast to the Articles of Incorporation, the Bylaws are an internal document describing how a nonprofit will run, similar to an operating manual. Unlike the Articles of Incorporation, the Bylaws are not filed with the secretary of state, but drafting Bylaws is necessary for the process of applying for and qualifying as a tax-exempt organization. During the application process, the IRS will require entrepreneurs to submit a copy of the Bylaws along with their application. The Bylaws typically lay out individual rules for how management will govern the organization, including meetings, voting procedures, record keeping and dissolution procedures.

Below is a summary of requirements for formation including the costs and fees associated with forming a non-profit organization for the states of California, Delaware, Florida, Illinois, New York and Texas.

c) Bylaws. By contrast to the Articles of Incorporation, the Bylaws are an internal document describing how a nonprofit will run, similar to an operating manual. Unlike the Articles of Incorporation, the Bylaws are not filed with the secretary of state, but drafting Bylaws is necessary for the process of applying for and qualifying as a tax-exempt organization. During the application process, the IRS will require entrepreneurs to submit a copy of the Bylaws along with their application. The Bylaws typically lay out individual rules for how management will govern the organization, including meetings, voting procedures, record keeping and dissolution procedures.

Below is a summary of requirements for formation including the costs and fees associated with forming a non-profit organization for the states of California, Delaware, Florida, Illinois, New York and Texas.

Comparison Of Formation Requirements For Non-Profits In Certain Jurisdictions[9]

	Entity Type	Initial Filing	Filing Fees/Publication	Filing Processing Times	Total Fees/Costs
California[10]	• CA allows persons to form both non-profit corporation and nonprofit unincorporated associations.[11]	• Incorporation document to be filed: Articles of Incorporation • Registration document to be filed: Registration of Unincorporated Nonprofit Association • Where to file: Secretary of State	• $30 initial filing fees • No publication/notice required. • *Optional*: Form CT-TR-1 to be filed if an IRS Form 990 is not filed.	• Routine (7+ business days) • 24 hours - $350 • Same Day $750	• $30-$780

[9] The information contained herein may change from time to time.

[10] California statute governing non-profits include the Nonprofit Corporation Law (Cal. Corp. Code §§ 5000–5080), the Nonprofit Public Benefit Corporation Law (Cal. Corp. Code §§ 5110–6910), and the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Cal. Gov't Code §§ 12580–12599.8).

[11] See Cal Corp. Code §§18000-24001.5.

Delaware	• DE allows persons to form both nonprofit corporations and nonprofit unincorporated associations	• Incorporation document to be filed: Articles of Incorporation • Delaware has no filing requirements for nonprofit unincorporated associations. • Where to file: Secretary of State	• $15 initial filing fee • $25 filing and indexing charge • $5 fee for entering the filing in DE • $40 courthouse municipality fee • $25 county assessment fee • No publication/notice required	• Routine (4-5 business days) • 24 hours - $50 • Same day - $200 • Two hours - $500 • One hour - $500 • $30 minutes - $1,500	• $110-$1,610
Florida[12]	• FL allows persons to form only non-profit corporations[13]	• Incorporation documents to be filed: Articles of Incorporation • Where to file: Department of State	• $70 • No publication/notice required	• Routine (5-7 business days) – 4:00 pm EST cutoff • Routine (1-4 business days) – 3:00 pm EST cutoff	• $70
Illinois[14]	• IL allows persons to form either non-profit corporations or unincorporated nonprofit associations	• Incorporation documents to be filed: Articles of Incorporation (Non-profit corporation) • Illinois has no statutes governing	• $50 (expedited) • No publication/notice required	• 20 business days (routine) • 24-48 hours - $100	• $50-$150

[12] Florida statutes governing non-profits include the Florida Not For Profit Corporation Act (Fla. Stat. §§ 617.01011–617.221) and the Solicitation of Contributions Act (Fla. Stat. §§ 496.401–496.430).

[13] See Section II.B.2 and Section II.B.1.b-c for additional information regarding the advantages and disadvantages of corporations and unincorporated associations.

[14] Illinois statutes governing non-profits include the General Not For Profit Corporation Act of 1986 (805 Ill. Comp. Stat. 105/101.01–105/117.05) and the Solicitation for Charity Act (225 Ill. Comp. Stat. §§ 460/0.01–460/23).

		unincorporated associations • Where to file: [Secretary of State.]			
New York[15]	• NY allows persons to form only non-profit corporations	• Incorporation documents to be filed: [Certificate of Incorporation] • Where to file: [Secretary of State]	• $75 • No publication/notice required	• 9-10 months (routine) • 24-48 hours - $25 • Same day - $75 • Two hours - $150	• $75-$225
Texas[16]	• TX allows persons to form either non-profit corporations or unincorporated nonprofit associations	• Incorporation document to be filed: [Certificate of Incorporation] (Non-profit corporation) • Unincorporated nonprofit associations may, but are not required to, file a statement appointing an agent for service of process. • Where to file: [Secretary of State]	• $25 • No publication/notice required	• 30 business days (routine) • 10-15 business days - $25	• $25-$50

[15] New York statutes governing non-profits include the New York Not-for-Profit Corporation Law (N.Y. Not-for-Profit Corp. Law §§ 101–1617) and Article 7-a, Solicitation and Collection of Funds for Charitable Purposes (N.Y. Exec. Law §§ 171-a–177).

[16] Texas statutes governing non-profits include the Texas Corporation Law (Tex. Bus. Orgs. Code Ann. §§ 1.001–20.002) and Texas Nonprofit Corporation Law (Tex. Bus. Orgs. Code Ann. §§ 22.001–22.516).

4. Employer Identification Number

Non-profit organizations must also apply for an EIN using IRS Form SS-4. The form may be filed online, by fax or by mail. The non-profit organization must have an EIN before it files an application with the IRS for U.S. federal income tax exemption.

5. Obtaining Tax Exempt Status; Fiscal Sponsorship

Once a media entrepreneur has determined that their organization has satisfied the organizational and operational requirements to qualify as a tax-exempt organization, as described below in Section V "Certain U.S. Federal Income Tax Considerations – Tax-Exempt Organizations", they must prepare an application for federal tax exemption. Applicants must electronically file the application for federal tax exemption and include any required attachments, which may include the organization's Articles of Incorporation and Bylaws, and the applicable application fee. It is highly recommended to apply for tax exempt status as soon as practicable after formation to comply with other requirements applicable to a tax-exempt non-profit organization. For example, in Delaware, a tax-exempt non-profit organization must receive a determination letter from the IRS (as described below) before filing as an exempt corporation in the state.[17] Failure to complete the exemption application will prevent the IRS from recognizing the organization as tax-exempt for U.S. federal income tax purposes. Once the determination is made, the IRS will issue a "determination letter" which indicates that the application has been approved and the organization qualifies as exempt from U.S. federal income tax. This letter should be retained with the organization's books and records as it will often be required as part of state charitable solicitation registration and prospective donors may ask to review it.

Fiscal sponsorships are a useful way for a newly formed nonprofit organization to attract donors, even if the organization is not yet recognized as a 501(c)(3) Organization (as defined below). A fiscal sponsorship typically occurs where one tax-exempt organization (as defined below) offers their legal and tax-exempt status to other groups engaged in activities related to the sponsoring the organization's purpose. Under a fiscal sponsorship, the sponsoring organization may receive charitable contributions from donors, which are tax-deductible to the donors. The sponsoring organization then retains control and discretion over those donations and provides them to the organizations or projects it sponsors. A fiscal sponsorship arrangement is helpful for newly formed nonprofits to attract charitable contributions without tax exempt status.[18]

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[17] *See* 8 Del. C. 1953, § 391(j); Delaware Division of Corporations. *Corporate Forms and Certificates for an Exempt Corporation*. https://corp.delaware.gov/corpformsexemptcorp09/.

[18] For additional resources on fiscal sponsorship see the following links: https://www.councilofnonprofits.org/running-nonprofit/administration-and-financial-management/fiscal-sponsorship-nonprofits; https://www.sfbar.org/wp-content/uploads/2019/10/fiscal-sponsor-memo.pdf; https://publiccounsel.org/wp-content/uploads/2021/12/Fiscal-Sponsorship-An-Alternative-To-Forming-a-Corporation.pdf.

6. State Tax-Exempt Status

A non-profit organization generally must also apply for exemption from state and applicable local income and other tax with the appropriate state agency or agencies. While some states may automatically grant an exemption from state income taxes to non-profit organizations that have obtained federal tax-exempt status, other states may require additional applications or documentation. Below is a summary of the requirements to apply for an exemption from state income tax in the states of California, Delaware, Florida, Illinois, New York and Texas.

Comparison Of State Tax Exemption Filing Requirements For Non-Profits In Certain Jurisdictions[19]

	Initial Filing	Supplemental Documents	Filing Location	Filing Fees
California	• Exemption Application (Form 3500) – For companies that do not have federal tax-exempt status • Exemption Request (Form 3500) – For companies with a federal determination letter	• If filing a Form 3500, please include a copy of the: o certified copy of the Articles of Incorporation o copy of the board-approved Bylaws, if applicable • If filing a Form 3500A please include a copy of the federal 501(c)(3) determination letter	• California State Franchise Tax Board Exempt Organizations Unit MS F120 Franchise Tax Board PO Box 1286 Rancho Cordova, CA 95741-1286	• Form 3500: $25 application fee • Form 3500A: $0
Delaware	• No Delaware corporate tax exemption filing required	• N/A	• N/A	• N/A

[19] The information contained herein may change from time to time.

Florida	• No Florida corporate tax exemption filing required	• N/A	• N/A	• N/A
Illinois	• No Illinois corporate tax exemption filing required	• N/A	• N/A	• N/A
New York	• [Form CT-247]() (Application for Exemption from Corporate Franchise Taxes by a Not-for-Profit Organization)	• Articles of Incorporation • Bylaws • Copy of determination letter	• NYS Tax Department NYS Tax Department, Corporation Tax Account Resolution W A Harriman Campus Albany, NY 12227-0852	• $0
Texas	• Form AP-204 (Texas Application for Exemption – Federal and All Others)	• Copy of determination letter	• Texas Comptroller of Public Accounts Exempt Organizations Section P.O. Box 13528 Austin, Texas 78711	• $0

7. Charitable Solicitation Registration

Most states in the U.S. (40) have enacted laws that regulate how non-profit organizations solicit funds. Solicitation of funds or donations can include donations through an application, on a website, social media, texting, phone calls, mail and personal asks, among other forms. In California, for example, solicitation of funds is defined as any request for money or property in connection with any appeal made for charitable purposes.[20]

If the state of organization of the non-profit organization requires non-profit charitable solicitation registration, the organization must do so with the relevant state agency before soliciting such state's residents for contributions. This means that for a non-profit organization organized in New York, the organization must file a charitable solicitation registration in New York before it may solicit any New York residents for donations. Further, if a media entrepreneur's non-profit organization intends to solicit donations from residents of another state, whether directly or through an application or link on a website, the media entrepreneur must file additional charitable solicitation registration forms in those states. For example, if a New York non-profit organization solicits donations through its website, then the media entrepreneur will need to file a charitable solicitation registration in New York as well as every other state where fundraising is solicited or donations obtained (e.g., California[21] or New Jersey[22]). Please also be aware that in some states, local governments may additionally require non-profit organizations to register and report if the organization solicits charitable contributions in the locality. Additionally, non-profit organizations may be required to file periodic financial reports. We recommend a media entrepreneur reach out to the appropriate state agency to learn more about the requirements for registration. In the comparison chart below, we provide example registration requirements in the states of California, Delaware, Florida, Illinois, New York and Texas.

[20] See Cal. Gov't Code § 12581.2.

[21] State of California Department of Justice Office of the Attorney General. Initial Registration Webinar. https://oag.ca.gov/charities/initial-reg.

[22] N.J. Rev. Stat. § 45:17A-23 (2022).

Comparison Of Charitable Solicitation Registration Requirements In Certain Jurisdictions[23]

	Initial Filing	Supplemental Documents	Registration Fees	Annual Reporting
California[24]	• Form CT-1	Certified Copy of the Articles of Incorporation Bylaws IRS determination letter IRS Form 1023	$50 (payable to the "**Department of Justice**")	Form CT-694 (due May 15) due only if funds collected from California donors represents more than 50% of the annual income.
Delaware	None required	None required	None required	None required
Florida[25]	• Initial Registration Statement	• Certified Copy of the Articles of Incorporation • Copies of all contracts with any solicitors hired by the non-profit • Form 990 or 990-EZ	• Fees depend on the immediate year's financial reports. Newly formed organizations with no previous financial history must file a proposed budget.	• Renewal statement must be filed online annually thereafter • Annual Reporting Form
Illinois[26]	• Form CO-1 Registration Statement • Form CO-2 Financial Information Form	• A list of all officers, directors and/or trustees • IRS determination letter • Articles of Incorporation • Bylaws	• $15 (payable to the "**Illinois Charity Bureau Fund**")	• AG990-IL Annual Report • *Optional*: $15 (payable to "**Illinois Charity Bureau Fund**") – if contributions exceed $15,000 annually

[23] The information contained herein may change from time to time.

[24] For further information, visit the California Attorney General's office website (https://oag.ca.gov/charities/initial-reg).

[25] For further information, *see* Florida Statutes § 496 and the Florida Department of Agriculture and Consumer Services Website (https://www.fdacs.gov/Business-Services/Solicitation-of-Contributions).

[26] For further information, visit the Illinois Attorney General's office website (https://illinoisattorneygeneral.gov/Consumer-Protection/Charities/Building-Better-Charities/Charity-Registration/).

		• *Optional*: Contracts with Professional Fund Raisers		• *Optional*: Audited Financial Statements – if contributions exceed $500,000 annually • *Optional*: Reviewed Financial Statements – if contributions exceed $300,000 annually • *Optional*: IFC Report of Individual Fund-Raising Campaign - if services of a professional fund raiser are used
New York[27]	• Form CHAR410 Note: If the non-profit does not use professional fund raisers in New York and its total contributions from New York state residents is less than $25,000 then registration is not necessary, and an exemption request may be filed.	• Articles of Incorporation • Bylaws • A list of all officers, directors and/or trustees • EIN • IRS Form 1023 • IRS determination letter • *Optional*: Contracts with Professional Fund Raisers	• $25 (if end of year net worth is under $25,000)	• Annual financial report (CHAR500) (due May 15)[28] • Filing fee will depend on year-end revenue[29]
Texas	• None required	• None required	• None required	• None required

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[27] For further information, visit the New York Attorney General's office website (https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/charities-registration).

[28] CHAR500 must be filed online here.

[29] Please contact your registered agent or attorney to determine exact filing fees. Filing fees can also be found on the instructions for Form CHAR500.

In each state that has passed charitable solicitation statutes, such statutes prohibit certain conduct and authorize the applicable state's agents to prosecute organizations and individuals for conducting improper activities. Engaging in such prohibited activity may result in fines or additional penalties. Prohibited activities include, but are not limited to:

- Engaging in fraudulent or illegal acts[30];
- Using a name, symbol, or statement closely related to another charitable organization that would lead to confusion or misleading a solicited person;[31]
- Using false or materially misleading advertising or promotional material in connection with any solicitation[32];
- Failing to apply contributions in a manner consistent with the solicitation or the charitable purposes expressed in the registration statement[33]; and
- Misleading or misrepresenting anyone to believe that any person, organization or governmental entity sponsors, endorses or approves a particular solicitation when such person, organization or governmental entity has not given consent to use his or her name for such purpose[34].

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[30] *See* NY Exec L § 172-D (2022); CA Gov. Code, § 12599.6; FL Stat § 496.415 (2022); 225 ILCS 460/9.

[31] See Cal. Gov't. Code § 12599.6; Fla. Stat. § 496.415 (2022); 225 Ill. Comp. Stat. § 460/11.

[32] See N.Y. Exec. Law § 172-D (2022); Cal. Gov't. Code § 12599.6.

[33] See N.Y. Exec. Law § 172-D (2022); Cal. Gov't. Code § 12599.6; Fla. Stat. § 496.415 (2022).

[34] See N.Y. Exec. Law § 172-D (2022); Cal. Gov't. Code, § 12599.6; Fla. Stat. § 496.415 (2022); 25 Ill. Comp. Stat. § 460/11.

IV. Legal Structure Operation/Maintenance

Photo: REUTERS - Ivan Alvarado

A. For-Profit Organizations

1. Ongoing Maintenance; Foreign Business Registration.

The formation of a business entity will require you to maintain its separate legal status in the state of formation, which often includes ongoing annual filing and related fees. Further, both for-profit and non-profit organizations that conduct activities outside their state of organization must maintain their applicable foreign qualifications and foreign registrations.[35] Statutory requirements to maintain organizational and foreign registration requirements are summarized as below:

[35] Note that in the United States, registering to do business in a state other than the state of organization is typically referred to as "foreign registration" or "foreign qualification". Foreign does not necessarily refer to having an "international" presence but can also refer to conducting business in one state, while being organized in another state.

Comparison Of Maintenance Requirements In Certain Jurisdictions[36]

	Corporation	Limited Liability Company	Limited Partnership	Non-Profit Corporations
California	(a) Document to be filed: Annual Statement of Information (only for publicly traded corporations, Corporate Disclosure Statement) (b) Where to file: Secretary of State (c) Due date: During 6-month period ending the last day of anniversary month of incorporation (d) Filing fees: $25 (e) Penalties for failure to file: $250 penalty (f) Additional filings: • Annual franchise tax voucher submission ($800) • State tax returns every year[37]	(a) Document to be filed: LLC Statement of Information (b) Where to file: Secretary of State (c) Due date: Biennially, during 6-month period ending the last day of anniversary month of organization (d) Filing fees: $20 (e) Penalties for failure to file: $250 penalty (f) Additional filings: • Annual franchise tax voucher submission. ($800) • State tax returns every year • Apportionment and Allocation of Income (if you have income or loss inside and outside California)	No report required	(a) Document to be filed: Annual Registration Renewal Fee Report (b) Where to file: Office of Attorney General – Registry of Charitable Trusts (c) Due date: No later than 4.5 months after the close of the organization's calendar year (d) Filing fees: $25-$1200 (depending on total revenue) (e) Penalties for failure to file: Delinquent Registry status, penalties, administrative or legal action, and the loss of tax exemption (f) Additional filings: • Annual Treasurer's Report (if annual gross receipts less than $50,000) • IRS Form 990, 990-EZ or 990-PF • Annual Statement of Information ($20) – Filed every two years with the Secretary of State by the calendar month that the Articles of Incorporation were filed. $50 late penalty.

[36] The information contained herein may change from time to time. Many jurisdictions allow annual reports to be filed online (e.g., https://dos.fl.gov/sunbiz for Florida).

[37] California due dates can be found here.

				• California Franchise Tax Board o Exempt Organization Annual Information Return (if annual gross receipts greater than $50,000) o California e-Postcard (if annual gross receipts equal to or less than $50,000) o Exempt Organizations Business Income Tax Return (if unrelated business taxable income greater than $1,000) o Corporation Franchise or Income Tax Return (if annual taxable income greater than $100)
Delaware[38]	(a) Document to be filed: Annual Franchise Tax Report (for domestic corporation); Annual Report (for foreign corporation) (b) Where to file: Secretary of State (c) Due date: On or before March 1 (June 30 for foreign corporation) (d) Filing fees: $50 *plus* franchise tax payable ($125 for foreign corporation) (e) Penalties for failure to file: $200 penalty *plus* 1.5% interest per month ($125 penalty for foreign corporation)	(a) Document to be filed: Annual Tax Statement (b) Where to file: Secretary of State (c) Due date: On or before June 1 (d) Filing fees: $300 (e) Penalties for failure to file: $200 penalty	(a) Document to be filed: L.P. Tax Notice (b) Where to file: Secretary of State (c) Due date: On or before June 1 (d) Filing fees: $300 (e) Penalties for failure to file: $200 penalty	(a) Document to be filed: Annual Report (b) Where to file: Secretary of State (c) Due date: On or before March 1 (d) Filing fees: $25 (e) Penalties for failure to file: $200 (f) Additional filings: • IRS Form 990, 990-EZ or 990-PF

[38] Delaware requires that all annual reporting be completed online, using their platform here.

Florida[39]	(a) Document to be filed: Annual Report (b) Where to file: Department of State (c) Due date: Between January 1 and May 1 (d) Filing fees: $150 (e) Penalties for failure to file: $400 late fee	(a) Document to be filed: Annual Report (b) Where to file: Department of State (c) Due date: Between January 1 and May 1 (d) Filing fees: $138.75 (e) Penalties for failure to file: $400 late fee	(a) Document to be filed: Annual Report (b) Where to file: Department of State (c) Due date: Between January 1 and May 1 (d) Filing fees: $500 (e) Penalties for failure to file: $400 late fee	(a) Document to be filed: Annual Registration Renewal Fee Report (b) Where to file: Department of State (c) Due date: Between January 1 and May 1 (d) Filing fees: $61.25 (e) Penalties for failure to file: Failure to file an annual report by the 3rd Friday of September will result in the administrative dissolution or revocation of the business entity on Florida records at the close of business on the 4th Friday of September. (f) Additional filings: • IRS Form 990, 990-EZ or 990-PF
Illinois[40]	(a) Document to be filed: Annual Report (b) Where to file: Secretary of State (c) Due date: During 60-day period before the first day of anniversary month of incorporation (d) Filing fees: $75 *plus* franchise tax payable (e) Penalties for failure to file: Monetary fees may be imposed	(a) Document to be filed: Annual Report (b) Where to file: Secretary of State (c) Due date: During 60-day period before the first day of anniversary month of formation (d) Filing fees: $75 (e) Penalties for failure to file: $200 for reinstatement	(a) Document to be filed: Annual Report (b) Where to file: Secretary of State (c) Due date: During 60-day period before the first day of anniversary month of formation (d) Filing fees: $100 (e) Penalties for failure to file: Administrative dissolution or cancellation	(a) Document to be filed: Annual Report (b) Where to file: Secretary of State (c) Due date: Annually by the end of the month prior to the registration anniversary month. (d) Filing fees: $75 (e) Penalties for failure to file: Administrative dissolution (f) Additional filings: • IRS Form 990, 990-EZ or 990-PF

[39] Florida requires that all annual reporting be completed online, using their platform here.

[40] Illinois requires that all annual reporting be completed online, using their platform here.

New York[41]	(a) Document to be filed: Biennial Statement (b) Where to file: Department of State (c) Due date: Biennially, during anniversary month of incorporation (d) Filing fees: $9 (e) Penalties for failure to file: $250 penalty	(a) Document to be filed: Biennial Report (b) Where to file: Department of State (c) Due date: Biennially, during anniversary month of formation (d) Filing fees: $9 (e) Penalties for failure to file: N/A	No report required	No state report required. Need to file IRS Form 990, 990-EZ or 990-PF.
Texas[42]	(a) Document to be filed: (i) Annual Franchise Tax Report; and (ii) Public Information Report (b) Where to file: Comptroller of Public Accounts (c) Due date: Between January 1 and May 15 (d) Filing fees: Franchise tax payable (e) Penalties for failure to file: $50 penalty	(a) Document to be filed: (i) Annual Franchise Tax Report; and (ii) Public Information Report (b) Where to file: Comptroller of Public Accounts (c) Due date: Between January 1 and May 15 (d) Filing fees: Franchise tax payable (e) Penalties for failure to file: $50 penalty	(a)/(b) Document to be filed (Where to file): (i) Annual Franchise Tax Report (with Comptroller of Public Accounts); and (ii) Periodic Report (with Secretary of State) (c) Due date: May 15 (for Franchise Tax Report); within 30 days after notice is mailed that the report is due (for Periodic Report) (d) Filing fees: Franchise tax payable; $50 (for Periodic Report) (e) Penalties for failure to file: $50 (for Franchise Tax Report); $25 penalty per month or $100, whichever is less (for Periodic Report)	(a) Document to be filed: Periodic Report of a Nonprofit Corporation (b) Where to file: SOSDirect (c) Due date: Office of the Secretary of State may require filing not more than once every four years. (d) Filing fees: $5 (e) Penalties for failure to file: Termination or revocation of registration. (f) Additional filings: • IRS Form 990, 990-EZ or 990-PF

[41] New York requires that all annual reporting be completed online, using their platform here.

[42] Texas requires that all annual reporting be completed online, using their platform here.

Comparison Of Foreign Business Registration Requirements In Certain Jurisdictions[43]

	Corporation	Limited Liability Company	Limited Partnership	Non-Profit Corporation
California	(a) Document to be filed: S&DC-S/N (for both foreign stock and nonprofit corporations) (b) Where to file: Secretary of State (c) Filing fees: $100.00 (foreign stock corporation) or $30 (foreign nonprofit corporation)	(a) Document to be filed: LLC-5 (b) Where to file: Secretary of State (c) Filing fees: $70	(a) Document to be filed: LP-5 (b) Where to file: Secretary of State (c) Filing fees: $70	See information for California Corporations
Delaware	(a) Document to be filed: Qualification Certificate of a Foreign Corporation (for both foreign stock and nonprofit corporations) (b) Where to file: Division of Corporations (c) Filing fees: $245 (d) Additional filings: A copy of a "Certificate of Existence", dated within 6 months prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of incorporation must be provided.	(a) Document to be filed: Certificate of Registration of a Foreign Limited Liability Company (b) Where to file: Division of Corporations (c) Filing fees: $200 (d) Additional filings: A copy of a "Certificate of Existence", dated within 6 months prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of	(a) Document to be filed: Certificate of Registration of a Foreign Limited Partnership (b) Where to file: Division of Corporations (c) Filing fees: $200 (d) Additional filings: A copy of a "Certificate of Existence", dated within 6 months prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of incorporation must be provided.	See information for Delaware Corporations

[43] The information contained herein may change from time to time.

		incorporation must be provided.		
Florida	(a) Document to be filed: Application by Foreign Corporation for Authorization to Transact Business in Florida (b) Where to file: Division of Corporations (c) Filing fees: $70 (d) Additional filings: Additional filings: A copy of a "Certificate of Existence", dated within 90 days prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of incorporation must be provided.	(a) Document to be filed: Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida (b) Where to file: Division of Corporations (c) Filing fees: $125 (d) Additional filings: A copy of a "Certificate of Existence", dated within 90 days prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of incorporation must be provided.	(a) Document to be filed: Application by Foreign Limited Partnership to Transact Business in Florida (b) Where to file: Division of Corporations (c) Filing fees: $1,000 (d) Additional filings: A copy of a "Certificate of Existence", dated within 90 days prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of incorporation must be provided.	(a) Document to be filed: Application by Foreign Not For Profit Corporation for Authorization to Conduct its Affairs in Florida (b) Where to file: Division of Corporations (c) Filing fees: $70 (d) Additional filings: A copy of a "Certificate of Existence", dated within 90 days prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of incorporation must be provided.
Illinois	(a) Document to be filed: BCA 13.15 (b) Where to file: Secretary of State (c) Filing fees: $150 (d) Additional filings: A copy of a "Certificate of Existence", dated within 90 days prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of	(a) Document to be filed: LLC-45.5 (b) Where to file: Secretary of State (c) Filing fees: $150 (d) Additional filings: A copy of a "Certificate of Existence", dated within 60 days prior to the filing of the qualification certificate, from the foreign corporation's	(a) Document to be filed: LP 902 (b) Where to file: Secretary of State (c) Filing fees: $150 (d) Additional filings: A copy of a "Certificate of Existence", dated within 30 days prior to the filing of the qualification certificate, from the foreign corporation's jurisdiction of incorporation must be provided.	(a) Document to be filed: NP 113.15 (b) Where to file: Secretary of State (c) Filing fees: $50 (d) Additional filings: A certified copy of the articles of incorporation within the last 90 days must accompany the application.

	incorporation must be provided.	jurisdiction of incorporation must be provided.		
New York	(a) Document to be filed: Application for Authority (b) Where to file: Department of State (c) Filing fees: $225 (d) Additional filings: A copy of a "Certificate of Existence", "Certificate of Good Standing" or "Certificate of Status" dated within the last year from the foreign corporation's jurisdiction of incorporation must be provided.	(a) Document to be filed: Application for Authority (b) Where to file: Department of State (c) Filing fees: $250 (d) Additional filings: A copy of a "Certificate of Existence", "Certificate of Good Standing" or "Certificate of Status" dated within the last year from the foreign corporation's jurisdiction of incorporation must be provided.	(a) Document to be filed: Application for Authority (b) Where to file: Department of State (c) Filing fees: $200 (d) Additional filings: A copy of a "Certificate of Existence", "Certificate of Good Standing" or "Certificate of Status" dated within the last year from the foreign corporation's jurisdiction of incorporation must be provided.	(a) Document to be filed: Application for Authority (b) Where to file: Department of State (c) Filing fees: $135 (d) Additional filings: A copy of a "Certificate of Existence", "Certificate of Good Standing" or "Certificate of Status" dated within the last year from the foreign corporation's jurisdiction of incorporation must be provided.
Texas	(a) Document to be filed: Form 301 (b) Where to file: Texas Secretary of State (c) Filing fees: $750 (d) Additional filings: None required	(a) Document to be filed: Form 304 (b) Where to file: Texas Secretary of State (c) Filing fees: $750 (d) Additional filings: None required	(a) Document to be filed: Form 306 (b) Where to file: Texas Secretary of State (c) Filing fees: $750 (d) Additional filings: None required	(a) Document to be filed: Form 302 (b) Where to file: Texas Secretary of State (c) Filing fees: $25 (d) Additional filings: None required

2. Corporate Governance Matters; Internal Policies

a. Corporate Governance Matters

Corporate governance standards apply to all companies and should be prioritized by media entrepreneurs. Every US company is governed by the state in which it is incorporated and state corporate regulations have been passed in every jurisdiction governing the basic aspects of an organization’s existence and actions. These regulations provide a framework for effective decision-making, establish accountability and transparency for the shareholders and members of an organization and mitigate financial and reputational risks.

As discussed in earlier sections, individuals often establish formal legal entities because of their benefits, including limited liability protection. However, to fully take advantage of the limited liability protection, a media entrepreneur must follow certain corporate formalities established by state regulations. Some of the corporate governance practices and actions recommended to maintain corporate formalities include (i) regularly scheduled meetings, (ii) special meetings, (iii) robust oversight of activities and expenditures of the business and (iv) accurate recordkeeping. Regardless of whether a media entrepreneur forms a corporation, a limited liability company or a partnership, their business should hold at least one annual general meeting of the governing body of the organization, which is essential to the organization’s governance. Special meetings may be called when there are important business matters to be discussed or when there are fundamental changes to the organization’s structure to be proposed. Often, the governing documents of an organization set forth notice requirements for these types of meetings. It is also crucial for media entrepreneurs to keep accurate minutes of these meetings as part of their corporate records, along with records of other matters that occur throughout the year. Examples of records include financial records, meeting minutes, corporate tax records and other filings with government authorities. Where the governing body of an organization finds it inconvenient to hold a meeting, the governing body may also approve matters through action by written consent.

Failure to maintain robust corporate governance policies and guidelines may result in deficient protection, which is called “piercing the corporate veil.” When someone attempts to pierce the corporate veil, they will argue that the organization is just an extension of a person, and not acting as a separate legal entity. A successful piercing the corporate veil claim will result in a judgment against a media entrepreneur’s personal assets in addition to the organization’s funds and resources.

b. Internal Policies

Establishing and overseeing internal policies in place is a prudent strategy for an entity to ensure the organization has a plan of action to avoid potential conflicts of interest and public scrutiny (e.g., allegations that the organization has inappropriately benefited its officers, directors, or trustees). Similarly, robust internal policies will serve as a practical guide for employees and the general operations of the organization. For example, a media entrepreneur may consider adopting a conflict-of-interest policy which is intended to ensure that when actual or potential conflicts of interest occur, the organization has a plan in place to advise the governing body about all relevant facts. Other policies to consider include workplace health and safety policies, employee code of conduct policy, or a whistleblower policy.

3. Certain Tax Matters

Ongoing maintenance of an entity treated as separate from its owner for U.S. federal income tax purposes will often require the entity to file U.S. federal income tax returns with the IRS and any applicable state and local tax returns, to pay any taxes due, and to provide certain information to owners or third parties about payments made to such persons by the entity during the taxable year. The specific nature of those obligations generally depends on the entity's tax status, as described below in Section V, entitled "Certain U.S. Federal Income Tax Considerations."

Media entrepreneurs are urged to consult with their tax advisors regarding all tax compliance requirements applicable to an entity in light of the entity's particular circumstances.

B. Non-Profit Organizations

1. IRS Compliance Requirements for Tax-Exempt Organizations

Non-profit organizations that qualify as exempt from U.S. federal income taxes, as described below in Section V "Certain U.S. Federal Income Tax Considerations – Tax-Exempt Organizations", are generally required to file with the IRS annual information returns on applicable IRS Form 990 reporting their income and expenses and demonstrating continuing compliance with the requirements applicable to a tax-exempt organization under the IRC. In addition, if the organization earned any income from trade or business activity that is not substantially related to its exempt purpose, it will have to file a tax return reporting such "unrelated business taxable income" on IRS Form 990-T. In all cases, the return generally must be filed by the fifteenth day of the fifth month after the end of the organization's accounting period (e.g., May 15 for an organization that uses a calendar year as its accounting period).

Compliance with the filing requirement is of paramount importance. Failure to file for three years will result in the automatic loss of exempt status. The non-profit entity would then need to reapply for tax-exemption and show reasonable cause for failure to file.

In addition, tax-exempt organizations generally must make their application for tax exemption (complete with any attachments), their determination letter, and their three most recently filed applicable IRS Forms 990 available to the public upon request and without charge. These documents must also be available at the organization's principal office during regular business hours.

2. Audited Financial Statements

Recordkeeping for non-profits is of the utmost importance. Many states require audited financial statements and other financial information for compliance if the non-profit organization spends over a certain amount or obtains revenues above a certain threshold. It is good practice to keep good records of accounting information, retain copies of all IRS filings and correspondence, maintain financial and other records. Important financial records include cash inflows (e.g., bank deposit splits, receipt books, invoices) and cash outflows (e.g., account statements, cancelled checks, invoices). It is prudent to keep records for at least three years after the end of the statute of limitations for the applicable taxable year.

3. Asset Records

Keeping a good record of your assets is also highly recommended, as the IRS and the state of organization will likely want details concerning the use of contributions. Be prepared to show all items that the non-profit owns and uses in its activities. This includes holding records of when and how the asset was acquired, whether any debt was used to acquire it, purchase price, how the asset is or was used, and when and how the asset was disposed of.

4. State Filings

The state in which the organization is organized may require annual filings to be made with the Secretary of State. Example annual filing obligations for the states of California, Delaware, Florida, Illinois, New York and Texas can be found in the chart above, under Section IV.A.1, entitled "Comparison of Maintenance Requirements in Certain Jurisdictions". Please make sure to inform yourself of all required filings and to remember all filing deadlines.

5. UBTI Filings

If the organization earned any income over $1,000 from trade or other business activity that is not substantially related to the exempt purpose of the tax-exempt entity ("unrelated business taxable income" or "UBTI"), it will have to file a tax return reporting such UBTI on Form 990-T. The obligation to file Form 990-T is in addition to the obligation to file the annual return, Form 990.

V. Certain U.S. Federal Income Tax Considerations

Media entrepreneurs also should carefully consider the tax implications of the various structures for operating their business. As discussed in more detail below, the tax consequences to the media entrepreneur and the business can vary significantly depending on the form in which the business is conducted and, and if conducted by an entity, the U.S. federal income tax classification of such entity.

This Guide provides a general overview of certain U.S. federal income tax considerations applicable to a media entrepreneur who is a "U.S. Person" (as defined below) that operates a media business in the United States through an entity formed in the United States (if conducted by an entity). This Guide does not address any other U.S. federal, state, local or non-U.S. tax considerations and, except to the extent otherwise specifically provided, does not discuss the U.S. federal income tax considerations applicable to a media entrepreneur who is not a U.S. Person. For purposes of this Guide, a "U.S. Person" is an individual who is a citizen, permanent resident, or a resident of the United States for U.S. federal income tax purposes. In general, a resident of the United States for U.S. federal income tax purposes is an individual who was physically present in the United States on at least (i) 31 days during the current year, and (ii) 183 days during the three-year period that includes the current year and the two years immediately before that, counting: (a) all the days the individual was present in the current year, and (b) one-third of the days the individual was present in the first year before the current year, and (c) one-sixth of the days the individual was present in the second year before the current year. A "Non-U.S. Person" is an individual that is not a U.S. Person.

The rules regarding an individual's residency for U.S. federal income tax purposes are complex, and each media entrepreneur is urged to consult with their own tax advisor regarding whether they qualify as a U.S. Person for U.S. federal income tax purposes.

This Guide assumes that the media business conducted by a media entrepreneur who is considered a Non-U.S. Person will be conducted within the United States, and any income earned by the media entrepreneur will be treated as effectively connected with the conduct of that business.

Because the tax consequences to the media entrepreneur depend on the form in which the business is conducted and, and if conducted by an entity, the U.S. federal income tax classification of such entity, each media entrepreneur is urged to consult with their own tax advisor to determine the U.S. federal, state, local and foreign tax consequences applicable to their particular circumstances in forming and operating their media business.

A. For-Profit Organization

Regardless of the legal structure of an entity under state law (as discussed above), the tax treatment of a business entity and its owners depends on the entity's U.S. federal income tax classification.

A business entity is classified as a corporation (a "C corporation"), a partnership, or an entity disregarded as separate from its owner (a "disregarded entity") for U.S. federal income tax purposes. Certain business entities, including, inter alia, a business entity that is organized under a U.S. federal or state statute that refers to the entity as a corporation or as being incorporated, are classified as C corporations by default. A business entity that is not classified as a per se C corporation, including, for example, a state law limited partnership or general partnership, or a state law LLC (an “eligible entity”) can elect its U.S. federal income tax classification. Unless it elects otherwise, an eligible entity that is created or organized in the United States, or under the laws of the United States or of any U.S. state (a “domestic eligible entity”) and that has two or more members is classified as a partnership for U.S. federal income tax purposes, and a domestic eligible entity that has only one member is classified as a disregarded entity for U.S. federal income tax purposes. An entity that has one owner under local law cannot be classified as a partnership. Each of these classifications impacts how owner(s) and/or the entity will comply with their tax reporting and filing obligations.

1. Disregarded Entity / Sole Proprietorship

In general, the income earned, and expenses incurred by a business a media entrepreneur operates as a sole proprietor or as a disregarded entity are treated as earned and incurred by the media entrepreneur directly and reported on the media entrepreneur’s personal U.S. federal income tax return. As a sole proprietor or owner of a disregarded entity, a media entrepreneur is subject to other tax compliance and payment obligations. Each media entrepreneur is urged to consult with their own tax advisor regarding their specific tax obligations, including with respect to any state or local taxes or any applicable employment or self-employment taxes and estimated tax liabilities.

2. Partnership

In general, an entity that is not a trust or default C corporation, and which has two or more members, is treated as a partnership for U.S. federal income tax purposes by default, unless an affirmative election is made to the contrary. A partnership is treated as a “pass-through” for U.S. federal income tax purposes, which means that the entity itself does not pay tax on its earnings, and its owners (“partners”) are taxed on their allocable share of the entity’s earnings, generally based on their ownership percentage in the entity. Each U.S. Person that is a partner will be required to report on their U.S. federal income tax return, and will be taxed upon their distributive share of, each item of the partnership’s income, gain, loss, deduction and credit for each taxable year of the partnership ending with or within the partner’s taxable year. Non-U.S. Persons that are partners in a partnership will be subject to tax (at the federal and possibly state and local levels) at regular U.S. federal income tax rates even though such Non-U.S. Person has no other contacts with the United States. The entity must also issue annual Schedules K-1 to all its partners and file an annual information return to report its income and expenses to the IRS on IRS Form 1065, among other applicable forms.

3. C Corporation

In general, an entity incorporated as a state law corporation under state law is classified as a C corporation for U.S. federal income tax purposes and cannot elect an alternative tax status. A disregarded entity or a partnership may also be eligible to make an election with the IRS to be treated as a C corporation for U.S. federal income tax purposes. A C corporation is subject to "double taxation," i.e., any taxable income earned by a C corporation is subject to U.S. federal income tax at corporate income tax rates and generally, any income distributed to the corporation's shareholders is subject to a second level of tax in the hands of the shareholders, which, depending on the particular circumstances of a media entrepreneur, may be a disadvantage of operating a media business as a C corporation. Both U.S. Persons and Non-U.S. Persons will generally be subject to U.S. federal income tax and will be required to file U.S. federal income tax returns, with respect to payments received from the C corporation. The entity would have to file an annual tax return for the business on IRS Form 1120 to report the business' income, among other applicable forms.

4. S Corporation

An LLC or corporation that satisfies certain requirements may be eligible to file an election with the IRS on IRS Form 2553 to be treated as an "S corporation" for U.S. federal income tax purposes. As with a disregarded entity or partnership, there generally is no corporate-level income tax on S corporations. However, S corporations can be somewhat more complicated and less flexible. For example, an S corporation cannot have non-U.S. shareholders and cannot have more than one class of stock. Hence, an S corporation election is not available to owners that are Non-U.S. Persons. The limitations and ongoing compliance requirements of an S corporation (as well as the consequences of inadvertent mistakes) can make the structure unfavorable to media entrepreneurs. Any media entrepreneur that is considering operating a business through an S corporation is strongly urged to consult with their tax advisor.

The formation and operation of an entity involves complex U.S. federal, state and local tax considerations that will differ for each owner. Media entrepreneurs are urged to consult with their tax advisors regarding the tax status of any entity it forms and operates.

B. Tax-Exempt Organization

U.S. federal income tax law provides exemption from federal income tax for many different types of organizations that satisfy certain organizational and the operational requirements. The discussion in this Guide is generally limited to those types of organizations that are exempt from tax because they are considered to promote the public welfare, broadly construed, or otherwise serve a charitable purpose. Such organizations are generally exempt from tax under section 501(a) of the IRC and are described by category in IRC section 501(c) (a "tax-exempt organization"). Exemption from federal income tax is generally only recognized by the IRS upon approval of a request or application submitted by the organization. Media entrepreneurs that are interested in applying for a tax exemption are urged to consult with their tax advisors regarding under which category of exemption the media entrepreneur's business might qualify and the procedural requirements to apply for exemption.

Below are some general advantages and disadvantages of an organization's qualification for exemption from U.S. federal income tax that a media entrepreneur may consider:

1. Advantages.

a) Tax Exemption. The most important advantage of an organization's qualification for exemption from federal income tax is that the organization's income, other than income from a trade or business unrelated to the organization's exempt purpose, will not be subject to federal income tax. If an organization has established exemption from federal income tax, it may also qualify for exemption from a variety of state and local taxes, including income, property, and sales, although the availability and extent of such exemptions are very much state-dependent.

b) Grant and Donation Opportunities. Under the IRC, individuals and corporations are permitted to deduct contributions to certain tax-exempt organizations.[44] The ability to receive tax-deductible contributions is a significant advantage to a tax-exempt organization in raising funds. However, many tax-exempt organizations that are exempt from federal income tax are not organizations to which deductible charitable contributions may be made. The IRS will indicate upon approval of a tax-exempt organization's application for exemption whether donations to the organization are permitted to be deducted by donors.

2. Disadvantages.

c) Compliance with Federal Income Tax Laws. Tax-exempt organizations are subject to strict operating requirements. Therefore, media organizations considering applying for tax-exempt status should be aware that their operations and the content of their publications may be limited, such as in the case of certain political activities discussed further in Section V.B.2.c. Media entrepreneurs are urged to consult with their tax advisors regarding the nature of these requirements and the business' ability to comply with its obligations on an ongoing basis.

d) No Private Inurement. In general, many tax-exempt organizations may not make payments to insiders (e.g., directors, officers, key employees, or members of the organization) except as reasonable payment for goods or services. Violation of this requirement can result in loss of exemption and the imposition of excise taxes. Therefore, certain tax-exempt organizations generally may not make payments of their earnings like a for-profit C corporation might pay dividends to its stockholders. Media entrepreneurs are urged to consult with their tax advisors regarding the applicability of this rule to the media entrepreneur's own business and its ability to comply with this requirement.

e) Restrictions on Certain Political Activities. Certain tax-exempt organizations are prohibited from engaging in partisan political

[44] For example, IRC section 501(c)(3) describes the most common form of an exempt organization to which donations may be deductible by the donor: a corporation, community chest, fund, or foundation that is organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, testing for public safety, the prevention of cruelty to children or animals, or promotion of national or international amateur sports competition, that satisfies a number of organizational and operational requirements (a "**501(c)(3) Organization**").

campaign activities and their lobbying activities must be limited. For example, a media entrepreneur who sets up a 501(c)(3) Organization must closely monitor its coverage of political issues and must limit any activities designed to influence, or attempt to influence, legislation, and is urged to consult with its tax advisor regarding its activities.

f) Foreign Conduit. A 501(c)(3) Organization may jeopardize the ability of donors to deduct donations to the 501(c)(3) Organization or its tax-exempt status by making payments, even charitable ones, to foreign organizations, unless it retains control and discretion over the use of the funds and ensures that they are used for charitable purposes. If a media entrepreneur intends to send money abroad from its tax-exempt organization, they should ensure that the organization enters into an arrangement with the foreign recipient organization to ensure that the organization maintains and exercises spending responsibility over the funds.

The organization and operation of a tax-exempt organization involve complex U.S. federal, state and local income tax considerations and compliance requirements. Media entrepreneurs are urged to consult with their tax advisors in connection with forming and operating a tax-exempt organization, including with respect to the application for tax exemption, the organization's intended operations, and all applicable obligations.

VI. Notable Legal Issues

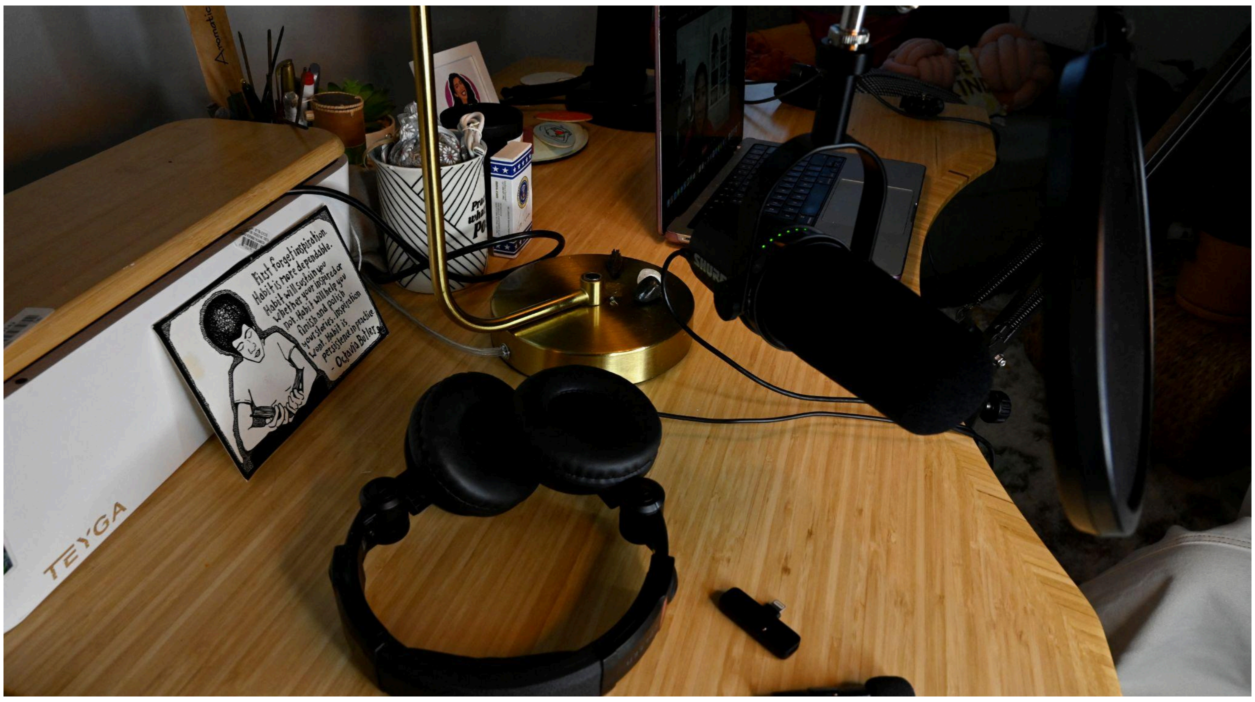

Photo: REUTERS - Magali Druscovich

The areas of law discussed in this section are likely to be relevant at some point throughout the life of the company. Media entrepreneurs should be aware of these legal issues and seek further legal guidance when scenarios arise that may implicate one or more of these discussed topics.

A. Copyright

Under U.S. copyright law, authors of original works have intellectual property rights. Original works can include, but are not limited to, books, blogs, photographs, songs, and recordings. A copyright is automatically created as long as a work is sufficiently original and is fixed in a tangible medium, which broadly means that the work can be communicated to others.[45] An idea itself cannot be copyrighted, but once that idea is expressed, it can be.[46] A copyright gives the owner the exclusive right to reproduce, adapt, distribute, perform, and publicly display the work.[47] An owner can sell or license their copyright to others. The "Fair Use" defense is an important exception to the ban on unlicensed use of copyright protected work.[48] Under the doctrine of Fair Use, copyrighted material

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[45] The United States Patent and Trademark Office. Copyright basics. https://www.uspto.gov/ip-policy/copyright-policy/copyright-basics; Cornell Legal Information Institute. *Fixed in a tangible medium of expression*. https://www.law.cornell.edu/wex/fixed_in_a_tangible_medium_of_expression.

[46] Cornell Legal Information Institute (n.d.). *Fixed in a tangible medium of expression*. Law.Cornell.edu. https://www.law.cornell.edu/wex/fixed_in_a_tangible_medium_of_expression.

[47] The United States Patent and Trademark Office (n.d.). *Copyright basics*. Uspto.gov. https://www.uspto.gov/ip-policy/copyright-policy/copyright-basics.

[48] Copyright.gov (2023, November). *U.S. Copyright Office Fair Use Index*. Copyright.gov. https://www.copyright.gov/fair-use/#:~:text=Fair%20use%20is%20a%20legal,protected%20works%20in%20certain%20circumstances.

can be used for a limited and transformative purpose such as commentary, critique, or parody.[49]

B. Trademark

Trademarks are another form of intellectual property that applies to words, phrases, designs, or combinations of things that identify goods or services.[50] For example, “Nike” and the Nike “swoosh” are trademarks.[51] THE NEW YORK TIMES and NYTimes.com are also examples of trademarks.[52] A trademark prohibits other people from using the word, phrase, or design to identify a similar good or service in a way that is likely to be confusing to customers.[53] If someone other than the trademark owner uses a trademark that is likely to be confusing, the trademark owner can sue for trademark infringement. An individual or business becomes a trademark owner when they use the mark.[54] Registration with the government is not necessary but can provide stronger protection.

C. Licensing and Permits

1. Licensing Agreements

In some instances, licensing may be necessary to allow the use of content or property owned by others. Copyrighted work is one such instance. In order to use content that is created by others, and therefore may be protected under copyright, a licensing agreement can be utilized. If an individual has created work that you want to use, entering into a licensing agreement should be considered.

2. Film Permits

Film permits may also be required when seeking to create video content. Film permits are overseen at the state and city level and vary across jurisdictions. In many cases a film permit is required for filming done for commercial use in public spaces. However, there is often an exception for news reporters covering

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[49] The Stanford Libraries (n.d.). *What is Fair Use*. Fairuse.Stanford.edu. https://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/.

[50] The United States Patent and Trademark Office (n.d.). *Trademark, patent or copyright*. Uspto.gov. https://www.uspto.gov/trademarks/basics/trademark-patent-copyright.

[51] The Berkman Klein Center for Internet & Society at Harvard University. *Overview of Trademark Law*. https://cyber.harvard.edu/metaschool/fisher/domain/tm.htm.

[52] The New York Times. *Trademarks*. https://help.nytimes.com/hc/en-us/articles/115014792207-Trademarks#:~:text=THE%20NEW%20YORK%20TIMES%2C%20NYTimes,to%20our%20products%20and%20services.

[53] The Berkman Klein Center for Internet & Society at Harvard University. *Overview of Trademark Law*. https://cyber.harvard.edu/metaschool/fisher/domain/tm.htm.

[54] United States Patent and Trademark Office (n.d.). *What is a trademark?* Uspto.gov. https://www.uspto.gov/trademarks/basics/what-trademark.

newsworthy events, or the permit requirement may not apply to the news media.[55] It is best to confirm the relevant state or city film permit requirements before filming.

3. Media Credentials

Media credentials are official documents that give journalists access to areas that are not open to the general public. Credentials can be provided to journalists by the news organization they work for or by the group in charge of a specific event or space.[56] Each organization has its own process for media credentials. Therefore, this issue should be considered and addressed on a case-by-case basis.

D. The First Amendment

The First Amendment to the United States Constitution protects freedom of speech and freedom of the press. However, not all speech is protected. Types of speech that are not protected by the First Amendment include incitement of imminent lawless action, obscene materials, defamation, false advertising, true threats, child pornography, and fighting words.[57]

E. Defamation

Defamation is one important type of speech that is not protected by the First Amendment. Generally, defamation is a false statement of fact published about someone that causes harm. This applies to internet articles, videos, or any other medium as long as the content was viewed by at least one third party. Laws regarding defamation vary somewhat across states. However, in general, in order for something to be considered defamation the statement must be:

- Published – seen by at least one other person besides the person the statement was about;
- Identifiable – people reading the statement know who it is about;
- Fact – opinions are not defamatory. If the statement can be proven true or false, then it is likely to be considered a fact and therefore can be defamation; and
- False – statement is shown to not be true.

In addition, the individual suing for defamation must show some level of fault by the publisher. If the subject of the allegedly defamatory language is a public official, the person must show by “clear and convincing” evidence that the

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[55] For example, NYC Media & Entertainment. *When a Permit is Required*. https://www.nyc.gov/site/mome/permits/when-permit-required.page; DC.Gov. *Film & Permit FAQ*. https://entertainment.dc.gov/page/film-permit-faq; Miami Riverside Center. *Get a Film Permit*. https://www.miami.gov/Permits-Construction/Filming-and-Events/Get-a-Film-Permit.

[56] For example, U.S. Department of State. *Information for Journalists*. https://www.state.gov/information-for-journalists.

[57] https://entertainment.dc.gov/page/film-permit-faq.

statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not."[58] This standard also applies in many, but not all, cases if the individual is a public figure (for instance a movie star or famous professional athlete). If the individual suing for defamation is not a public official or figure, they only have to show that the publisher was negligent when publishing the defamatory statement.[59]

F. Social Media Regulations

Social media regulation is a rapidly developing area of law. Many regulations have been proposed at the state and federal level as well as internationally. Multiple states have enacted or are in process of enacting policies the regarding use of social media by minors.[60] Texas and Florida have both enacted sweeping laws that limit the ability for social media companies to moderate content.[61] As of April 2024, both laws are currently under review by the United States Supreme Court. These laws are just two examples of a dynamic regulatory landscape. The legal definition of a social media company varies widely across states and may in some cases implicate websites not traditionally viewed as social media companies especially if those websites allow the creation of content by third-party users. This is an area of law to be aware of at the federal level and in any state where a media entrepreneur seeks to undertake business activity.

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[58] New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

[59] Digital Media Law Project (2023, September 10). *Proving Fault: Actual Malice and Negligence*. Dmlp.org. https://www.dmlp.org/legal-guide/proving-fault-actual-malice-and-negligence.

[60] National Conference of State Legislatures (2024, January 26). *Work Opportunity Tax Credit*. https://www.ncsl.org/technology-and-communication/social-media-and-children-2023-legislation.

[61] Tex. H.B. 20, 87th Legislature, (2021) https://capitol.texas.gov/tlodocs/872/billtext/html/HB00020S.htm; Fla. Legis. Social Media Platforms, S.B. 7072, (2021) https://www.flsenate.gov/Session/Bill/2021/7072.

VII. Potential Benefits and Incentives

A. Small Business Tax Incentives

There are federal tax credits available to employers in certain circumstances. An incomplete list of certain federal resources is included below. Applicable state-level tax credits may also be available. Media entrepreneurs are urged to consult their tax advisors regarding these and any other applicable tax credits, including whether the owner or the business satisfy the numerous requirements to qualify to claim the tax credits.

1. Work Opportunity Tax Credit

A federal tax credit is available until December 31, 2025 to employers who hire members of certain groups that have faced significant barriers to employment (the "Work Opportunity Tax Credit").[62] A taxable business may apply the credit against its federal business income tax liability, and qualified 501(c)(3) Organizations may claim the credit against the employer's share of Social Security tax for qualified veterans who begin work for the organization before 2026. The eligibility and procedural requirements for an employer to claim the Work Opportunity Tax Credit are nuanced and detailed, and accordingly, media entrepreneurs are urged to consult with their tax advisors regarding their ability to satisfy the requirements necessary to claim the Work Opportunity Tax Credit.

2. Small-Business Health Insurance Premiums

A federal tax credit is available for certain small employers that, among other requirements, provide a qualified health plan to their employees through a Small Business Health Options Program (SHOP) Marketplace.[63] The credit is applied to the business federal income tax on a sliding scale based on the size of the employer (the smaller the employer, the larger the credit generally), and the maximum credit is 50% of premiums paid for small business employers, and 35% of premiums paid for small tax-exempt employers. The credit is available to eligible employers for two consecutive tax years. Media entrepreneurs are urged to consult with their tax advisors regarding their ability to satisfy the requirements necessary to claim the SHOP tax credit.

3. Credit for Paid Family and Medical Leave

A federal tax credit is available to employers who provide paid family and medical leave to their employers, in an amount equal to a percentage of the wages an employer paid to qualifying employees while the employees are on family leave or medical leave. Employers are generally eligible to claim this credit if they have a written policy in place satisfies certain requirements, including providing (i) at

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[62] Section 51 of the IRC. *See also* I.R.S. *Work Opportunity Tax Credit*. https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit (Aug. 27, 2021).

[63] Healthcare.gov. *The Small Business Health Care Tax Credit*. https://www.healthcare.gov/small-businesses/provide-shop-coverage/small-business-tax-credits/.

least two weeks of paid family and medical leave each year to all qualifying employees who work full time (and prorated for employees who work part time), and (ii) that paid leave is at least 50% of wages normally paid to the employee.[64] Media entrepreneurs are urged to consult with their tax advisors regarding their ability to satisfy the requirements necessary to claim this tax credit.

B. Business Incentives

Federal, state, city and non-profit programs provide financial support for refugee, minority, asylee, and immigrant entrepreneurs. Many resources are available through local organizations that are in turn supported by government funding. Individual research into local organizations and resources is recommended. An incomplete list of federal and state resources is included below.

1. Grants.gov

Government grants, including those focused on immigrant, asylee, and refugee entrepreneurs are offered on Grants.gov. Grant offerings are often highly fact specific. On this website it is possible to search for grant opportunities and determine eligibility requirements.

2. Refugee Microenterprise Development Program

This federal program provides grant funding, training, and technical assistance to eligible individuals seeking to start a business.[65]

3. Small Business Administration Loans

The U.S. Small Business Administration (the "SBA") supports multiple loan programs for small business owners. The most common is the SBA 7(a) loan, which is a loan from a private lender that is partially backed by the Small Business Administration.[66] For newer or smaller business, SBA microloans may also be available.[67]

4. Small Business Development Centers

Small Business Development Centers are supported by the SBA and provide assistance and counseling to entrepreneurs in centers across the country.[68]

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[64] Section 45S of the IRC. *See also* I.R.S., *Section 45S Employer Credit for Paid Family and Medical Leave FAQs*. https://www.irs.gov/newsroom/section-45s-employer-credit-for-paid-family-and-medical-leave-faqs.

[65] Office of Refugee Resettlement. (2023, November 23). *Refugee Microenterprise Development*. https://www.acf.hhs.gov/orr/programs/refugees/microenterprise-development.

[66] U.S. Small Business Administration. *7a loans*. https://www.sba.gov/funding-programs/loans/7a-loans.

[67] U.S. Small Business Administration. *Microloans*. https://www.sba.gov/funding-programs/loans/microloans.

[68] You may use the following web page to find a Small Business Develop Center near you, https://www.sba.gov/local-assistance/resource-partners/small-business-development-centers-sbdc#id-find-an-sbdc-in-your-area.

5. Minority Business Development Agency Business Centers

Part of the U.S. Department of Commerce, the Minority Business Development Agency offers Business Centers across the country. These centers allow minority-owned businesses to access business experts and obtain guidance on many business issues. The website page is located at https://www.mbda.gov/mbda-programs.

6. State Specific Resources

California Mosaic Small Business Center: https://mosaic-irc.org/hc/en-us

California Immigrants Rising Seed Grant:
https://immigrantsrising.org/financial-support/seed-grant/

New York Entrepreneurship Assistance Centers:
https://esd.ny.gov/entrepreneurship-assistance-centers#objective

Texas Economic Development Small Business Assistance:
https://gov.texas.gov/business/page/small-business

Open My Florida Business: https://openmyfloridabusiness.gov/resources/

Illinois Small Business Development Centers: https://dceo.illinois.gov/bus

SEMBRAMEDIA TrustLaw Thomson Reuters Foundation