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BECOMING A 501(c)3

A Step-by-Step Guide

Walking you through incorporation in the state of Indiana, securing an EIN, and applying for tax-exempt status

TABLE OF CONTENTS

INTRODUCTION

This guide is for individuals seeking to incorporate a 501(c)3 nonprofit in the state of Indiana. It will walk through the steps to formalize a 501(c)3 organization with the Indiana Secretary of State and the Internal Revenue Service (IRS).

This guide will not cover mission development, basic characteristics of nonprofit organizations, or board development. A list of resources and consultants with expertise on these topics is included in the addenda.

This guide does not constitute legal advice. A list of attorneys can be found in the addendum for direct legal support.

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ACKNOWLEDGEMENTS

This document was created with the help of many sources. Metamorphosis Consulting Services and The Indianapolis Library conducted a workshop and provided materials related to this topic.

Fiscal Sponsorship

Before we dive into the specifics of setting up a 501(c)3, a word about fiscal sponsorships. According to Charitable Allies, a Fiscal Sponsorship is a formal arrangement where a current nonprofit agrees to serve as an incubator of sorts for a charitable program that was created by other persons. This could include fiduciary oversight, financial management, administrative services, and administrative fee.

From Charitable Advisors:

"A fiscal sponsor can be a 'home' for a startup nonprofit, a charity, or a fledgling nonprofit program looking for funding even if it lacks tax exempt status. This can be helpful for new charities because the fiscal sponsor will often take on a number of responsibilities that they might struggle with on their own, including receiving and administering contributions, dealing with some of the operating issues of a nonprofit, etc. This also can be useful for charitable programs of for-profit organizations or all-volunteer organizations that cannot sustain the administrative costs. Finally, current stand-alone nonprofit organizations that for one reason or another need to downsize could benefit from a fiscal sponsor in this endeavor to provide the administrative support it needs.

"Operating in a fiscal sponsorship arrangement usually will provide a benefit to the donors of the fiscal sponsee because the donations will be deductible where they would otherwise not be. This does seem to be an arrangement that is decreasing both in popularity and opportunity to find willing "homes" for a variety of reasons. This aspect of fiscal sponsorships is largely beyond the scope of this article, but it appears that this is generally due to the creation of the Form 1023EZ that made it much easier and cheaper for smaller nonprofits to be formed and a form of fiscal sponsorship mentioned below, the single-member LLC, which is not quite a fiscal sponsorship as normally understood."

For more details, see the full Charitable Advisors article, "Fiscal Sponsorships: Get the Benefits of a Charity Without Being One."

About the 501(c)3 Designation

Being 501(c)(3) means that a particular nonprofit organization has been approved by the Internal Revenue Service (IRS) as a tax-exempt, charitable organization.

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization*,* i.e.*,* it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

A 501(c)3 must be organized and operated for one or more of eight exempt purposes:

1) Religious
2) Charitable
3) Scientific
4) Testing for public safety
5) Literary
6) Educational purposes
7) Foster national or international amateur sports competition
8) Prevention of cruelty to children or animals

For more information on exemption requirements for 501(c)3 organizations, visit the IRS website.

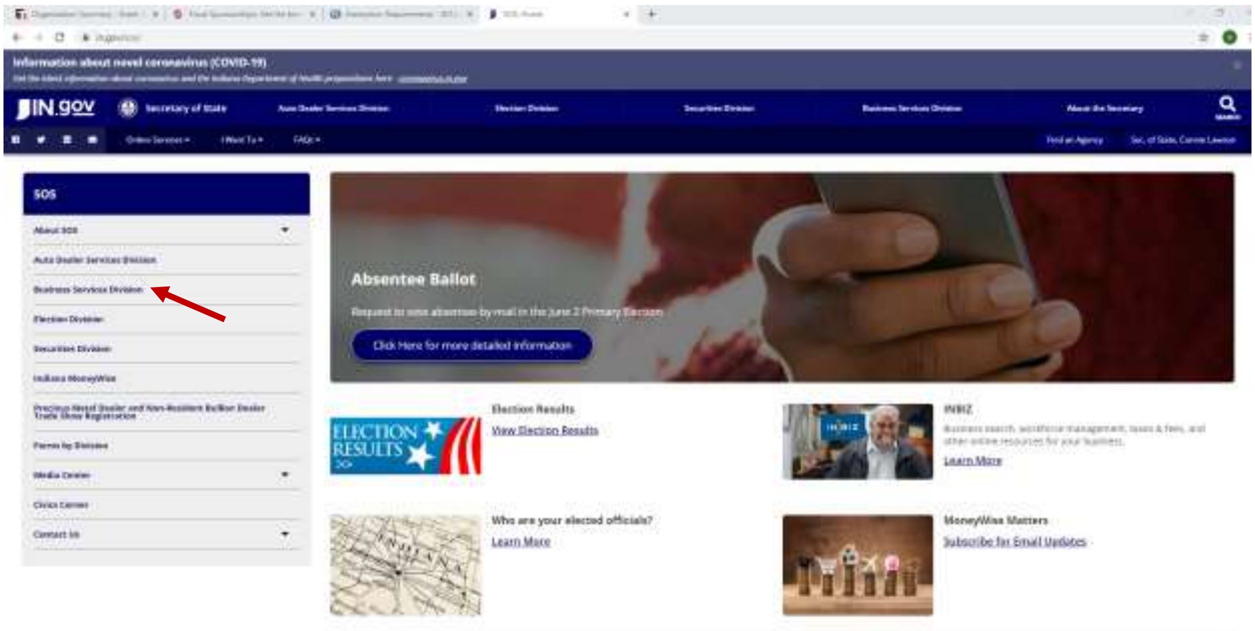
Checklist to Formalize Your 501(c)3 Organization

- ☐ Determine business name
- ☐ Determine business address
- ☐ Determine primary "registered agent"
- ☐ Names and addresses for board members (at least 3)
- ☐ Develop Articles of Incorporation
- ☐ Incorporate and register your business with the Indiana Secretary of State
    - Statement regarding distribution of assets upon dissolution
    - Statement of purpose
- ☐ Draft and finalize bylaws
- ☐ Complete application for EIN (Form SS-4)
- ☐ Apply for nonprofit status from IRS (Form 1023)

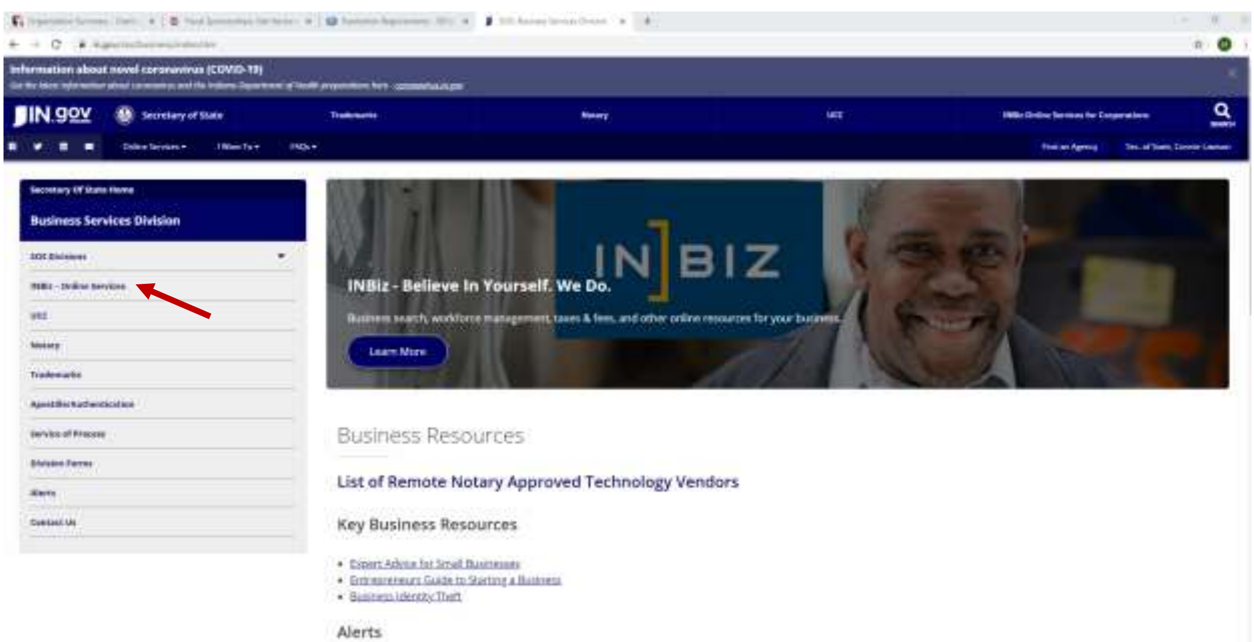
INDIANA SECRETARY OF STATE

This is a step-by-step guide for filing to incorporate and register with the Indiana Secretary of State's office.

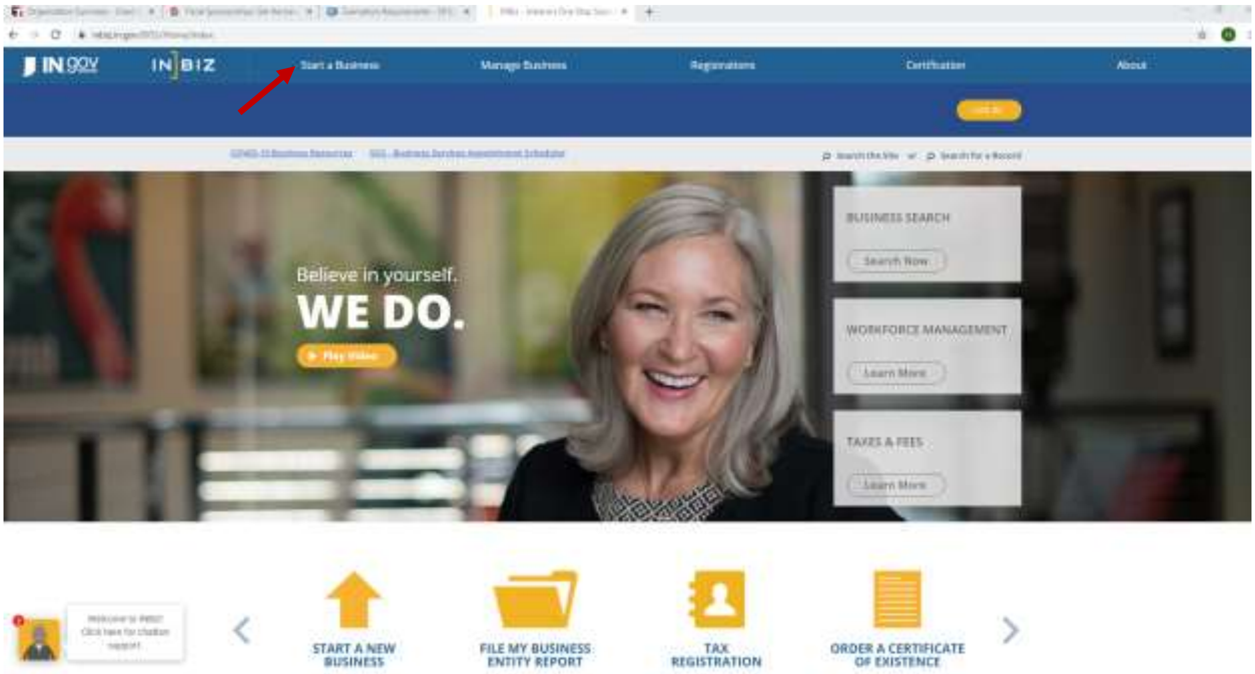
1) Visit [in.gov/sos](in.gov/sos) and click "Business Services Division."



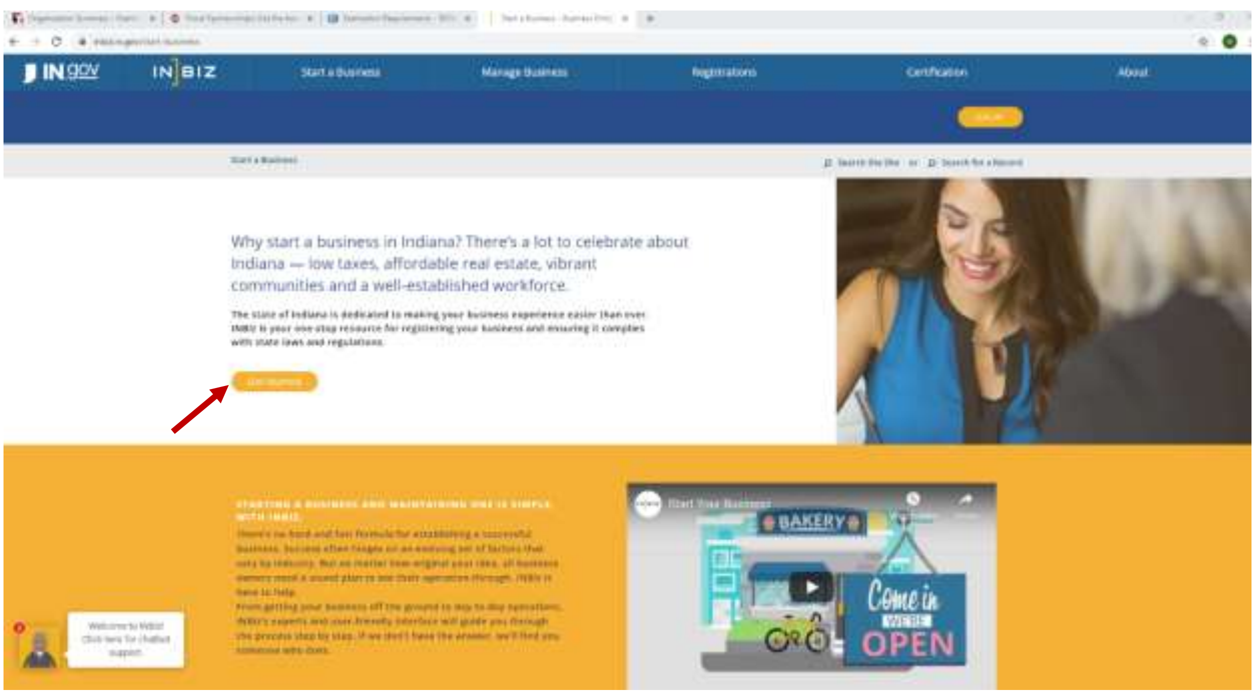
2) Click "INBiz – Online Services."



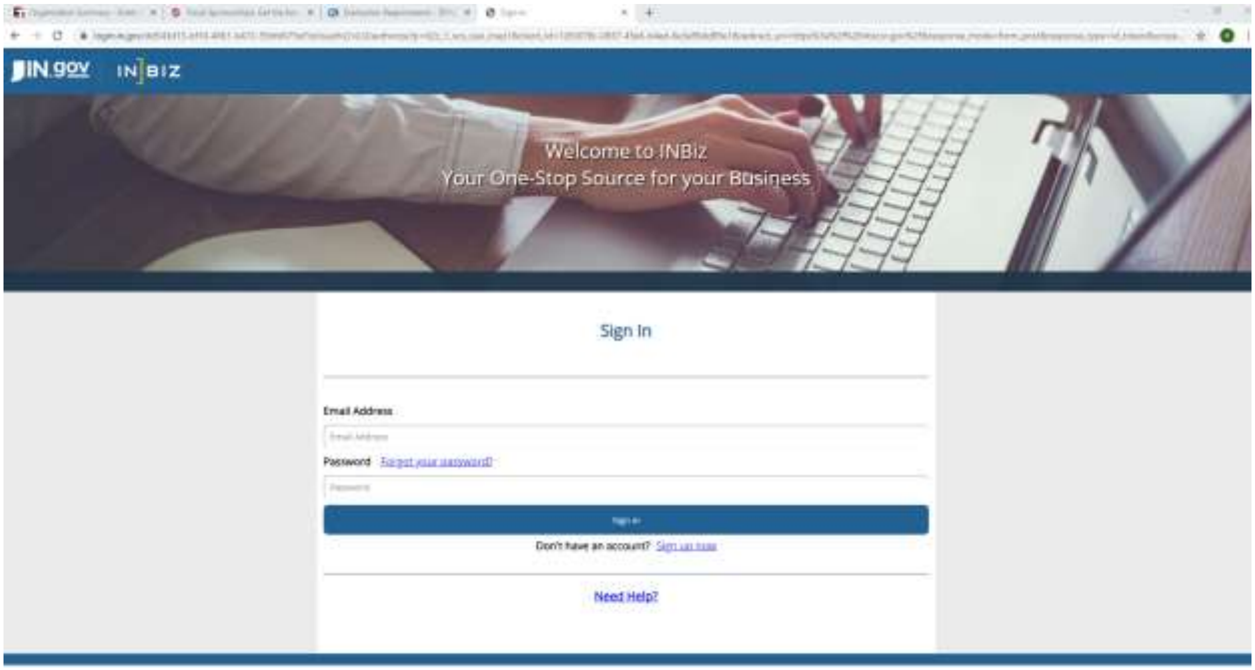
3) At the top of the page, click "Start a Business."



4) Click "Get Started."

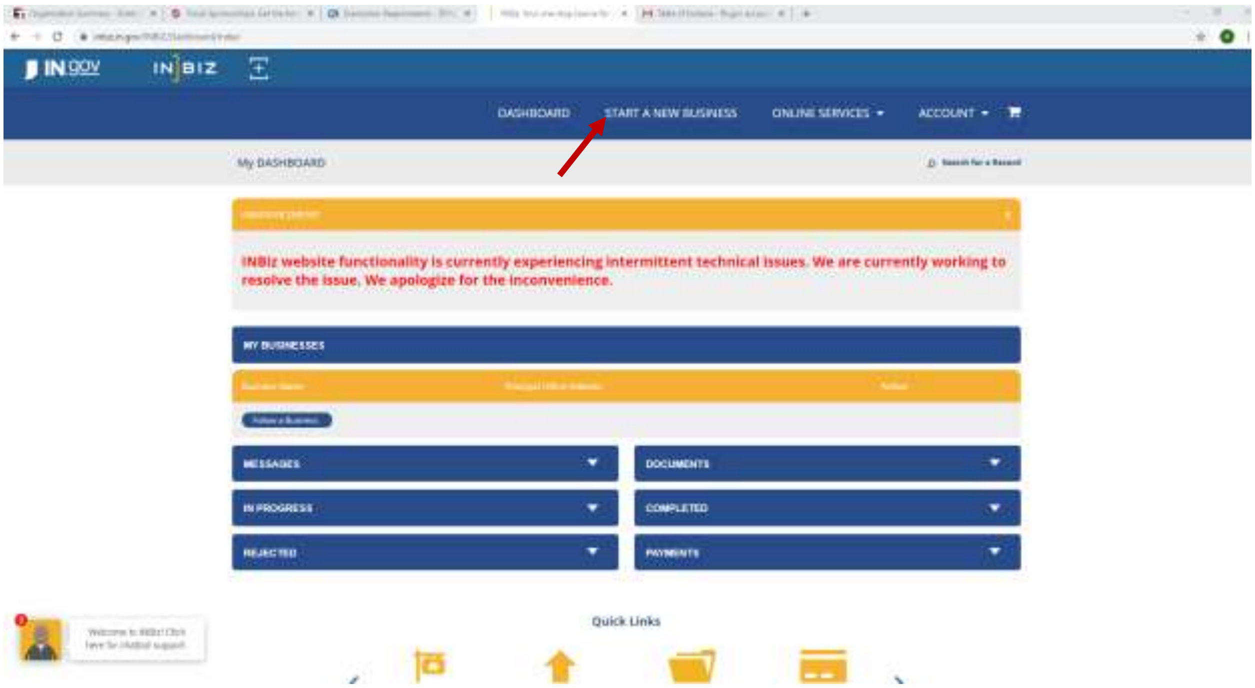


5) Create a log-in. You will need to provide your email address, phone number, full name, and create a password.

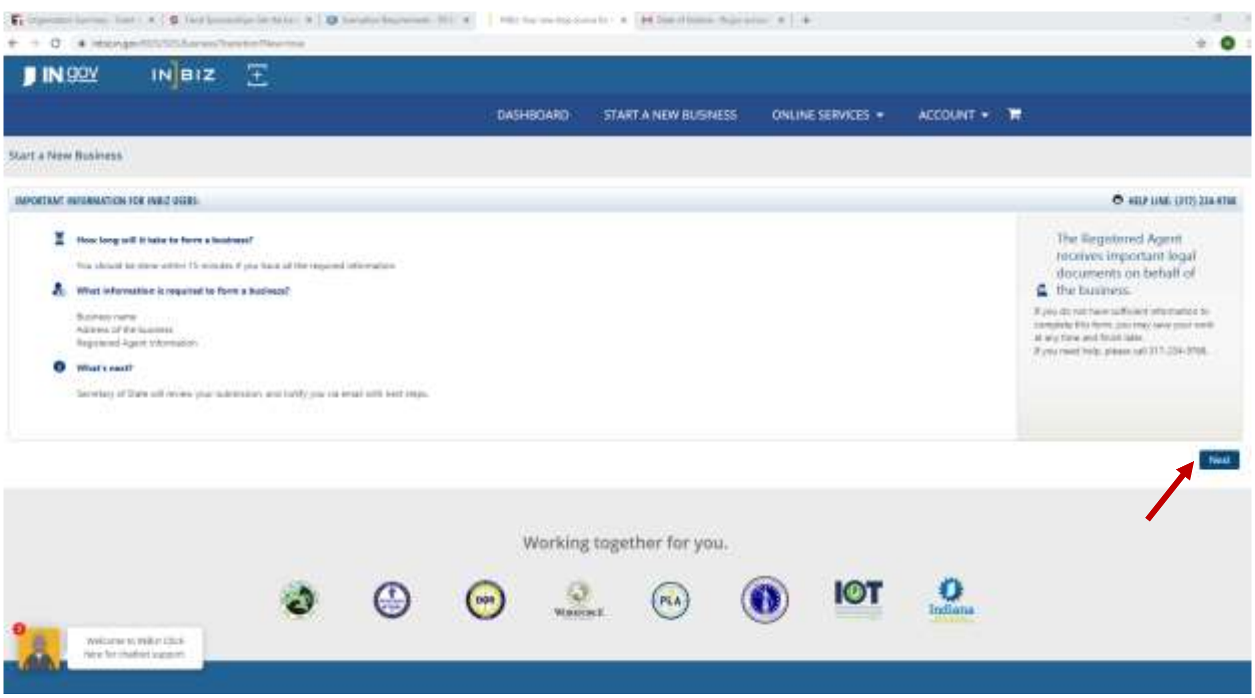


6) Answer questions to register your account.

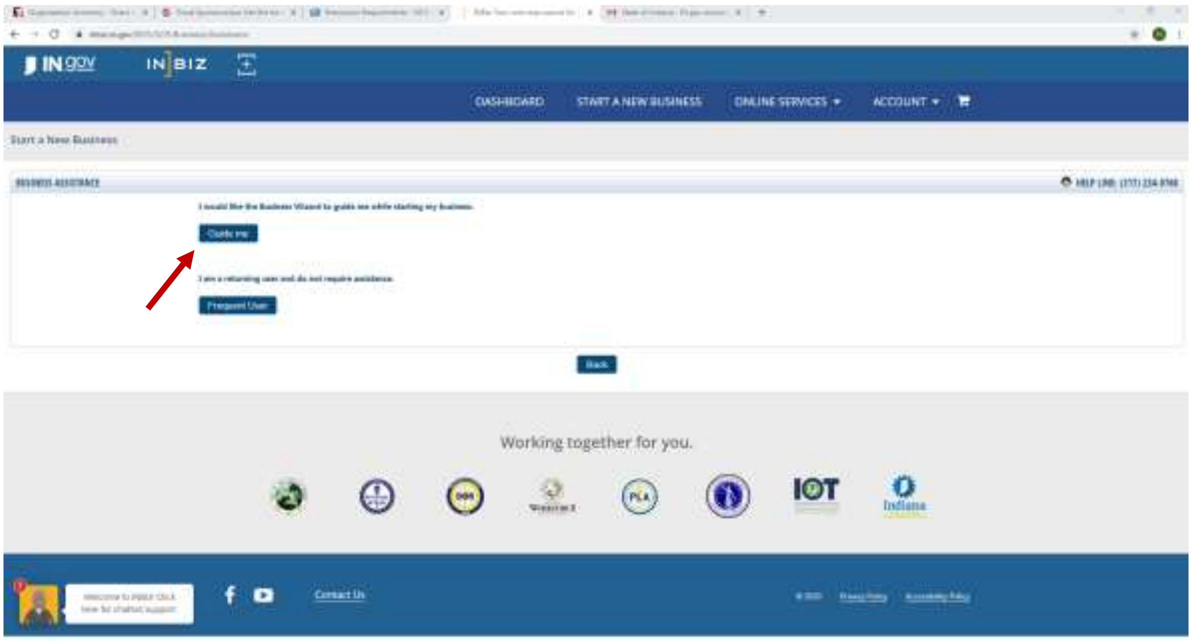
7) Click "Start a New Business."



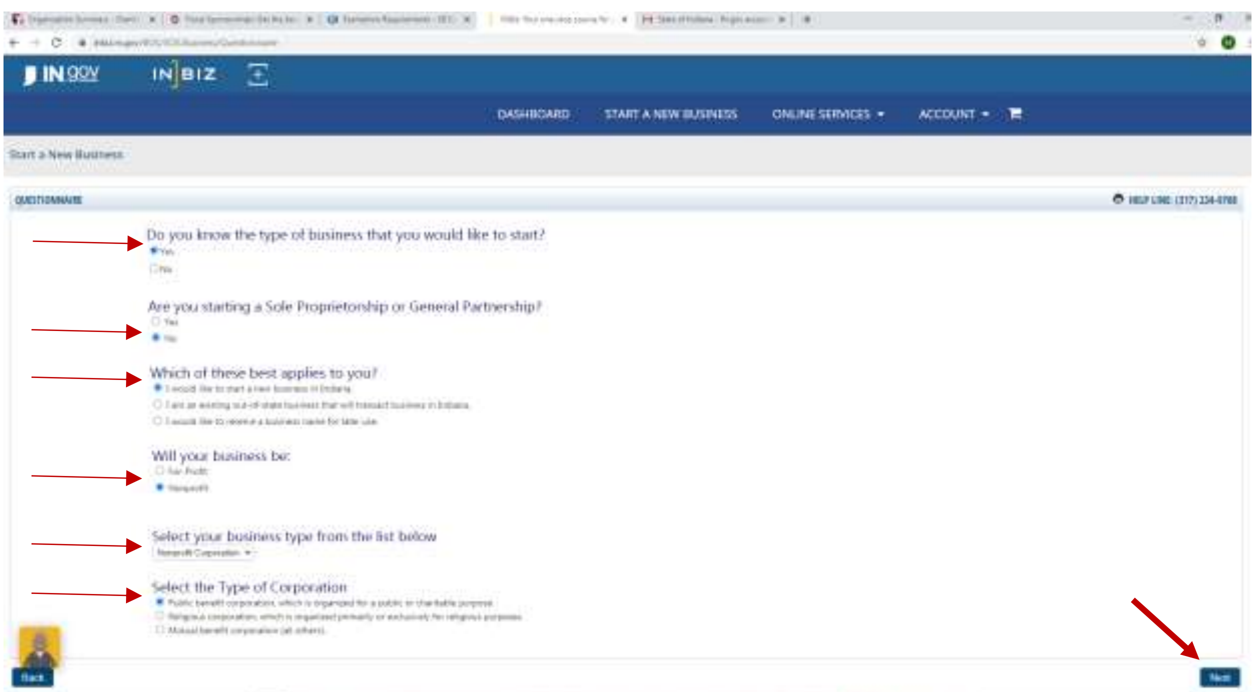
8) Read the "Important Information for INBIZ Users" and ensure you have all the required information. Then click "Next."



9) Click “Guide Me.”

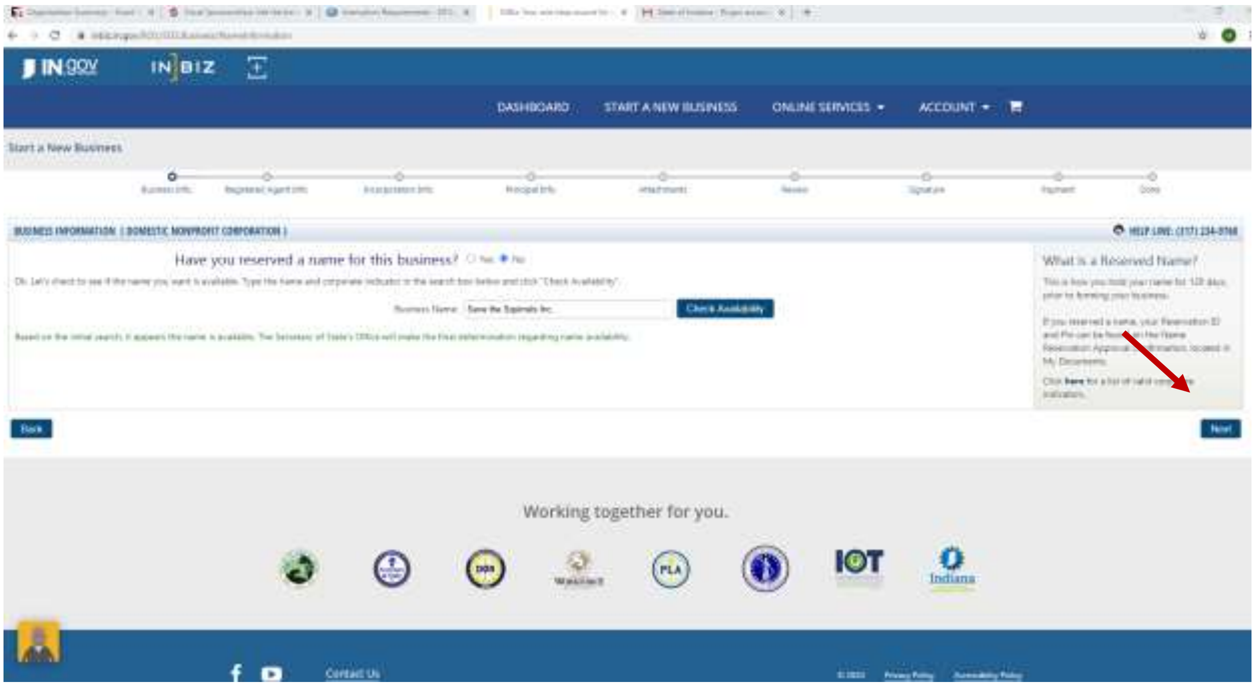


10) Answer the questions as demonstrated below, then click “Next.”

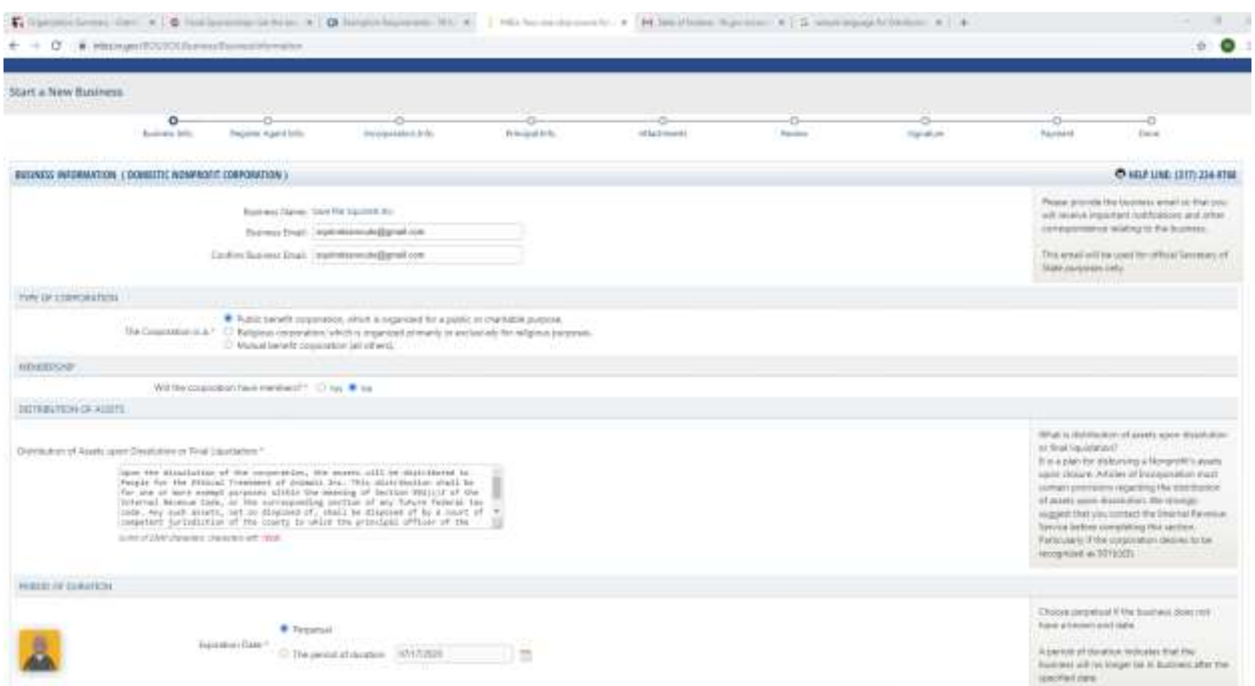


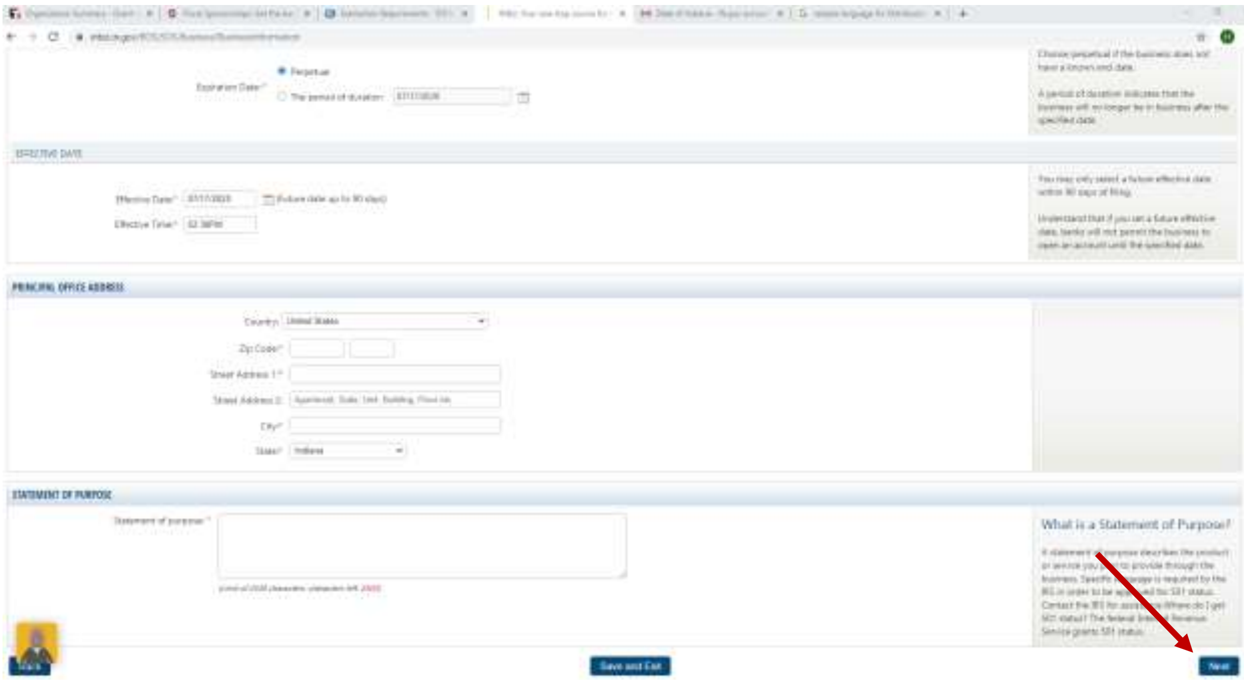
The next series of screenshots will walk you through the process of building your Articles of Incorporation. You may build these outside the system, if you wish. If you need to update any of this information down the road, you will have an opportunity to do that annually through the business entity report.

11) If you have already reserved a business name, click “Yes” and enter it into the box. If you have not already reserved a business name, click “No.” You can then check the availability of names you are considering. Then click “Next.”



12) Complete the Business Information form. Be sure to select “Perpetual” under “Period of Duration.” See below for sample Distribution of Assets language. The “Effective Date” will be whatever date and time you are filing this paperwork. Then click “Next.”

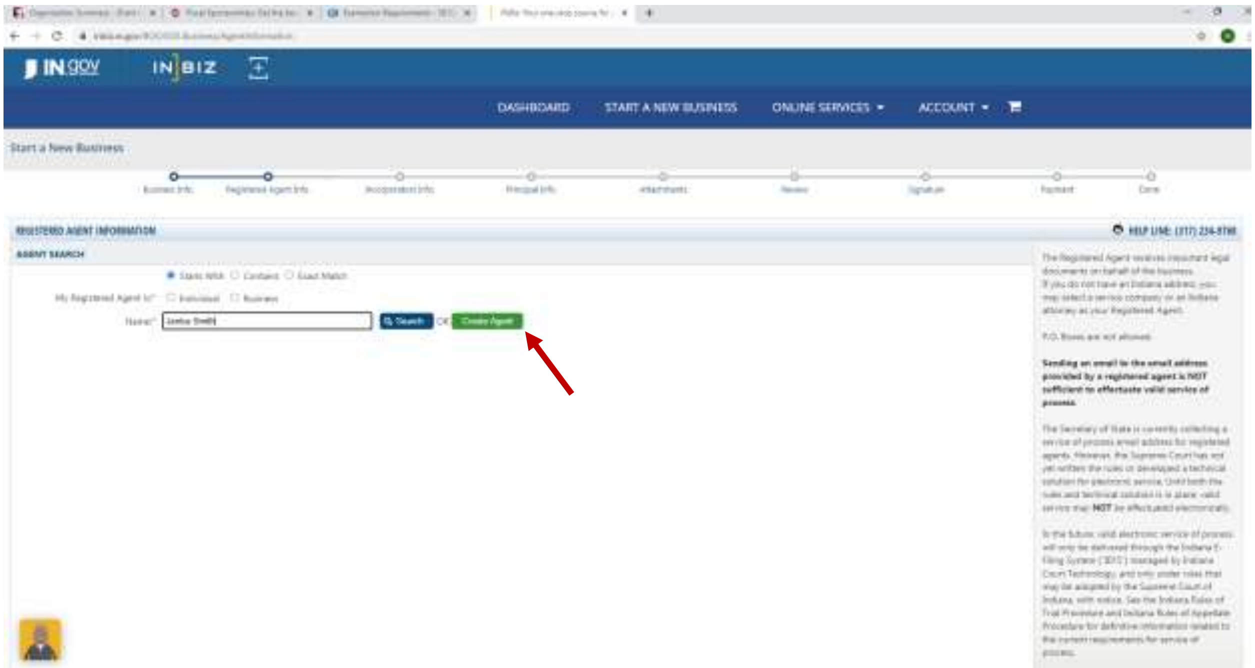


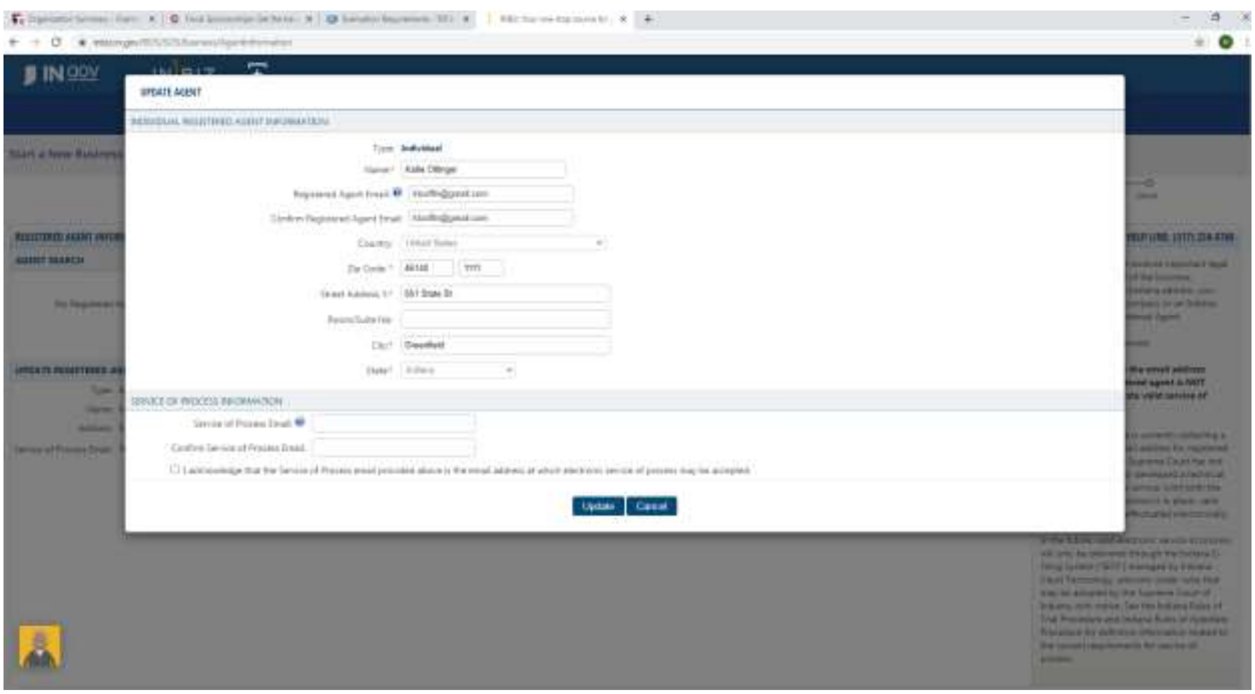


Sample Distribution of Assets language:

Upon the dissolution of the corporation, the assets will be distributed to ___________ Inc. This distribution shall be for one or more exempt purposes within the meaning of Section 501(c)3 of the Internal Revenue Code, or the corresponding section of any future federal tax code. Any such assets, not so disposed of, shall be disposed of by a court of competent jurisdiction of the county in which the principal officer of the corporation is then located, exclusively for such purpose or to such organizations as said court shall determine.

13) The Registered Agent receives important legal documents on behalf of the business. It can be you. If your Registered Agent is not yet registered, type in their name and click "Create Agent." Then click "Next."





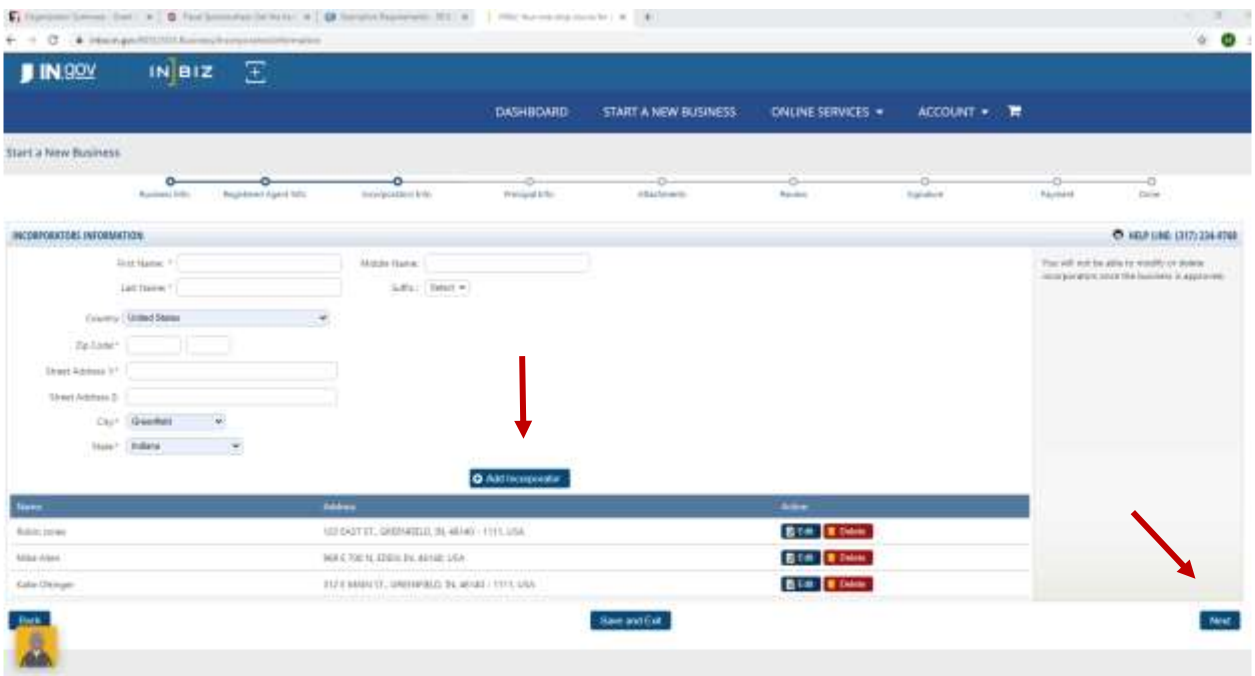
Further Info About Registered Agents

From Indiana Code (IC 23-17-6)

A corporation must continuously maintain the following in Indiana:

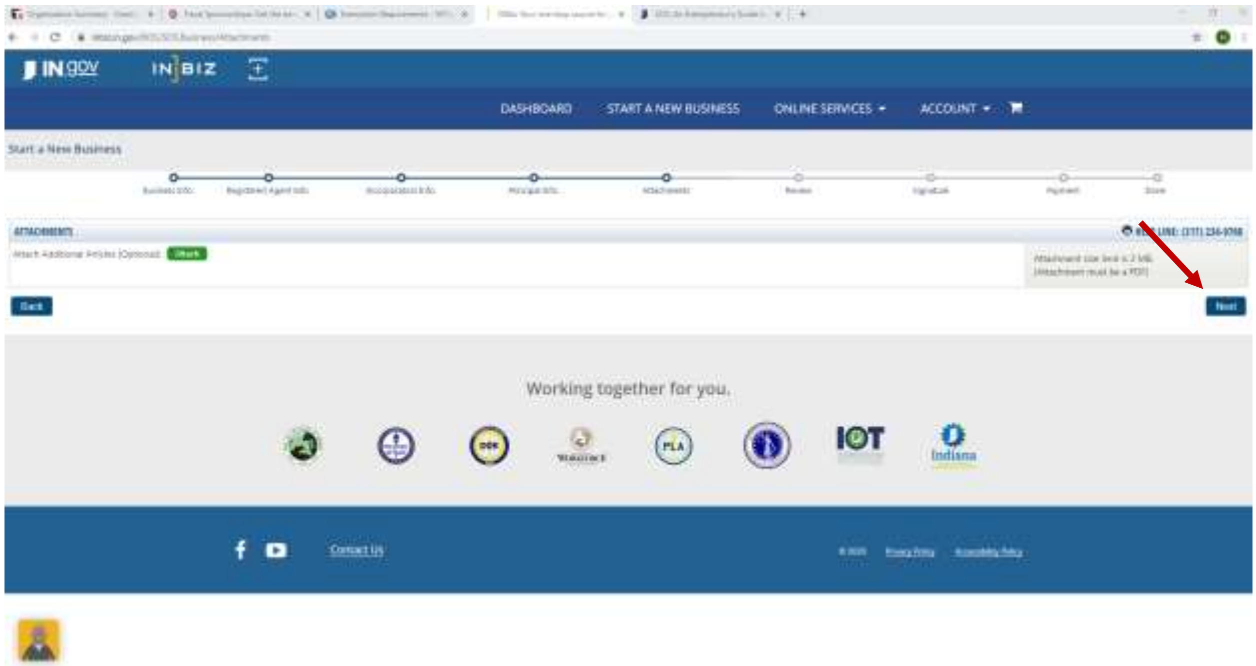
- A registered office
- A registered agent who must be one of the following:
    - An individual who resides in Indiana and whose business office is identical with the registered office.
    - A business or nonprofit corporation whose business office is identical with the registered office.
    - A foreign business or nonprofit corporation authorized to transact business in Indiana whose business office is identical with the registered office.

14) Incorporators are your founders. It is recommended that the incorporators are your 3 board members. After entering information for each incorporator, click "Add Incorporator." They will show up in a list on the screen. Note: these cannot be changed once your nonprofit is approved. When all Incorporators are entered, click "Next."



15) You will likely want to skip "Principal Info."

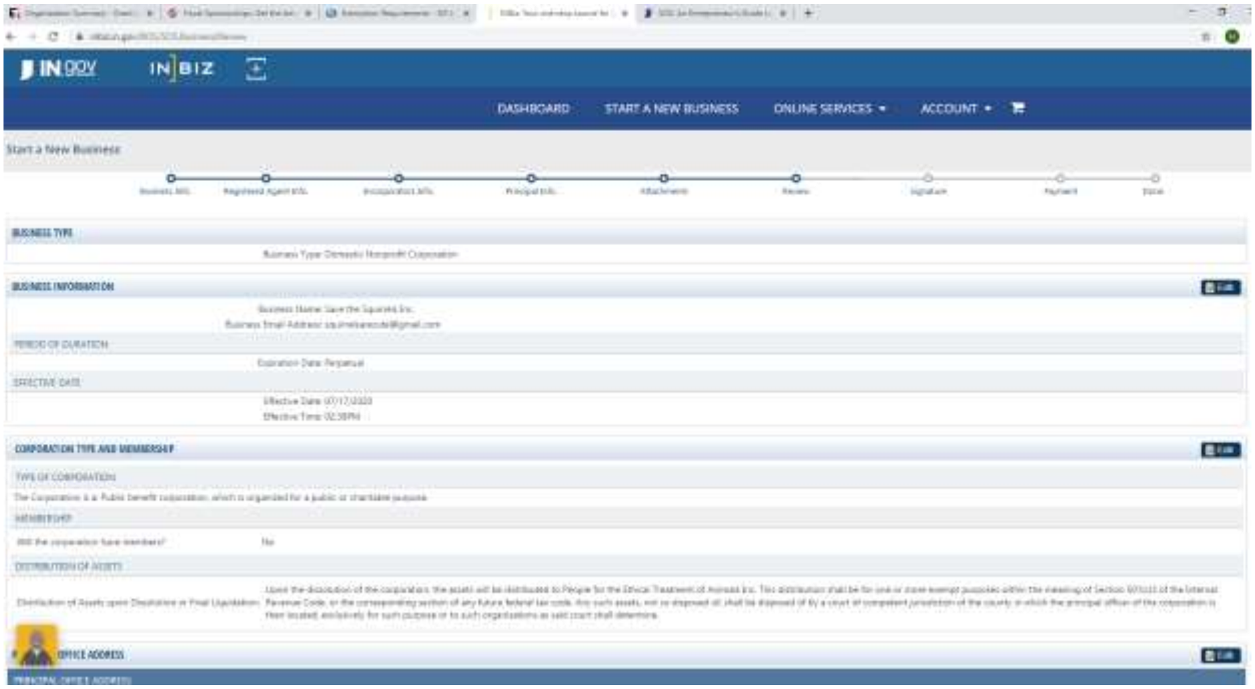
16) You may upload Attachments to your application. Click “Next” when finished.



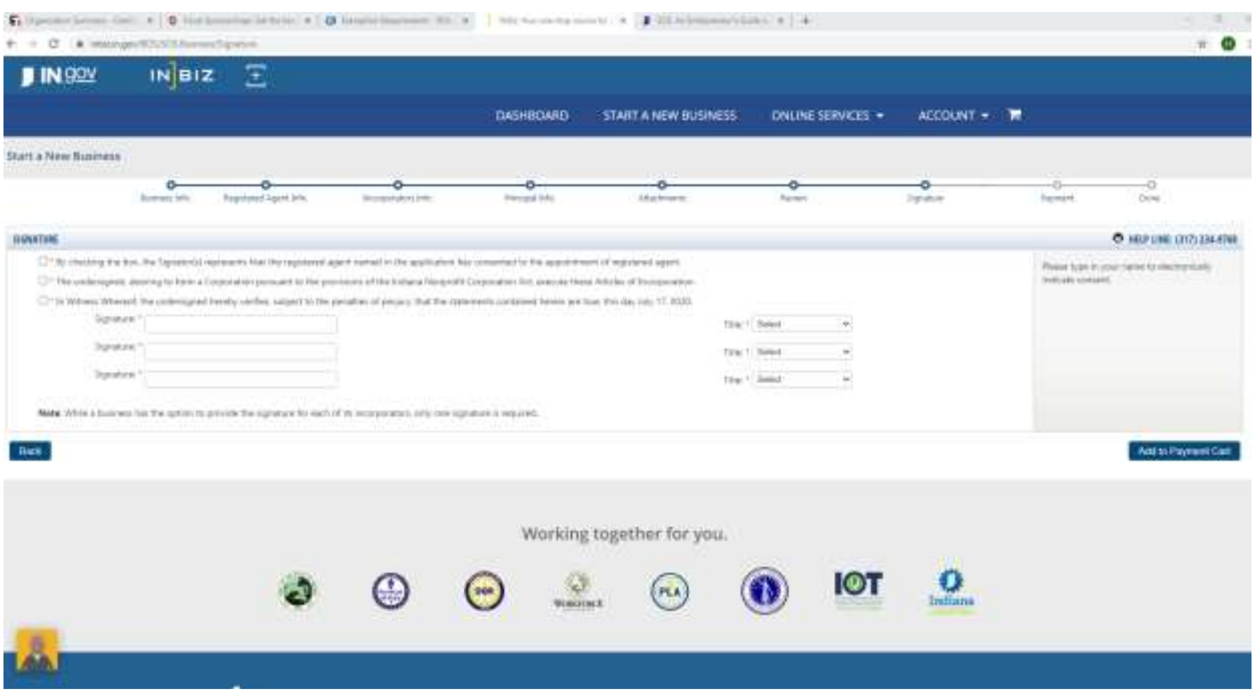
Articles of Incorporation must include the following:

- The name of the corporation (which must include “Corporation,” “Company,” “Incorporated,” “Limited,” or an abbreviation thereof.
- A statement as to whether the corporation will be a public benefit, religious, or mutual benefit corporation.
- The name and address of the Registered Agent.
- The name and address of all the Incorporators.
- A statement as to whether the corporation will have members.
- A statement regarding the distribution of assets upon dissolution (IC 23-17-22-5). Note: You don’t have to specify a certain agency – you can say something like “An organization with a similar scope.”
- Best case scenario: have an attorney who specializes in nonprofit law draw up your Articles.
- You could also borrow from another successful organization that is in good standing with the state, and model their Articles.

17) Review your application, and make edits where necessary. Once everything is correct, click "Next."



18) Provide signatures, submit payment, and you are done! The filing fee is $30. If you mail in printed Articles of Incorporation, the fee is $50. Pretty quickly after you submit, you will receive a copy of your Articles with a seal – keep that somewhere safe.



BYLAWS

Your nonprofit's bylaws are both a legal document and a roadmap for your organization's actions. A required element when forming a corporation, bylaws are a form of agreement or a contract between the corporation and its owners to conduct itself in a certain way. While for a commercial business the owners are its shareholders, the ownership of a nonprofit corporation belongs to the public as represented by the nonprofit organization's governing body, usually a Board of Directors.

Bylaws vary according to the nature of your organization, but consider them to be your internal manual for how you will operate. They should address basic activities, such as:

- governance, such as whether the organization is controlled by a board or by its membership;
- when and how board meetings will be held and conducted;
- how board directors and officers will be appointed or elected;
- voting procedures, such as what constitutes a quorum so that your board can make a decision;
- how committees are created and discontinued;
- number of directors for your board, their required qualifications, and their terms of service;
- language that affirms the requirements and prohibitions for nonprofit (501(c)(3) organizations as set out by the IRS;
- rules that govern conflicts of interest; and
- how the bylaws can be changed or amended.

An organization that is exempt from federal income tax, as described in Internal Revenue Code 501(c)(3), is required to report changes to its bylaws and other governing documents annually to the IRS on the organization's IRS Form 990. Substantial changes to a tax-exempt organization's character, purposes, or methods of operation should be reported to the IRS as soon as possible because such changes, if inconsistent with the organization's tax exemption, could affect the organization's tax-exempt status. For minor changes, just report them on your organization's next annual Form 990.

It is important that the bylaws not contradict the Articles of Incorporation. Although bylaws are not public documents, it would be wise to keep them available for public viewing. Doing so will help with your organization's transparency. Bylaws should be used, changed when needed, and examined often. Don't let them gather dust on a shelf somewhere. Make them a working document in every sense. (Source: The Balance Small Business)

Find nonprofit bylaws templates here and here.

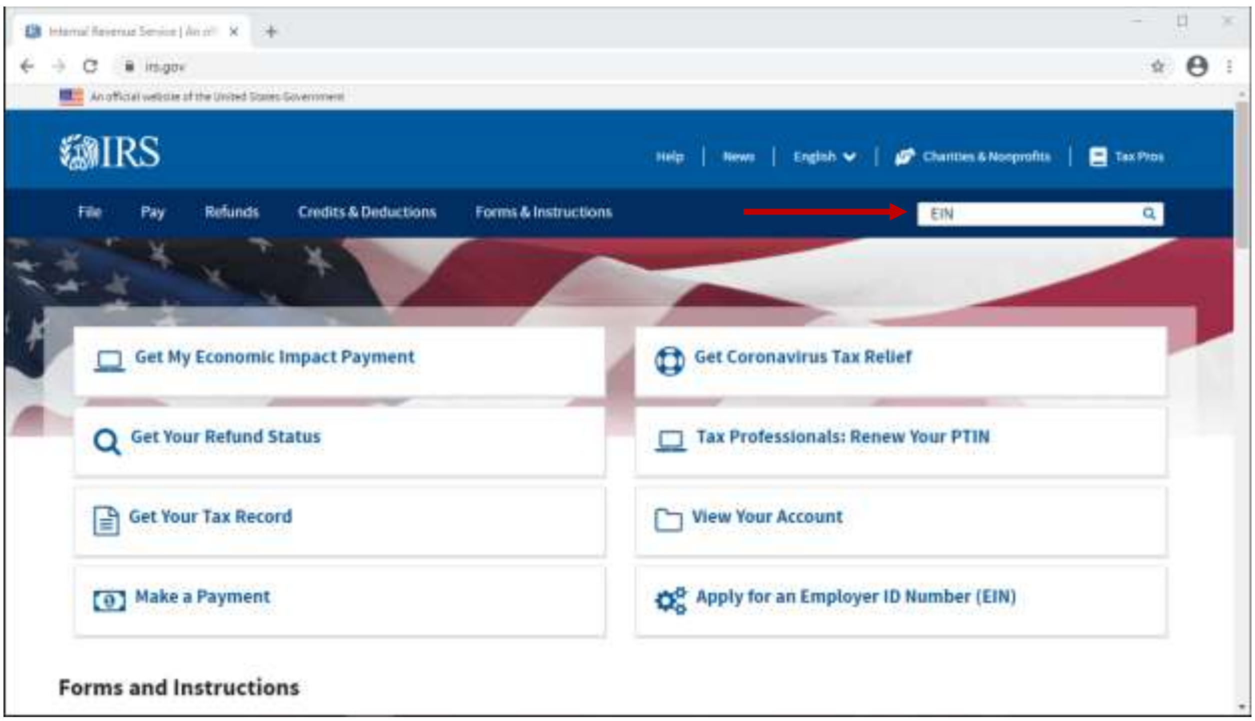
INTERNAL REVENUE SERVICE (IRS)

Form SS-4

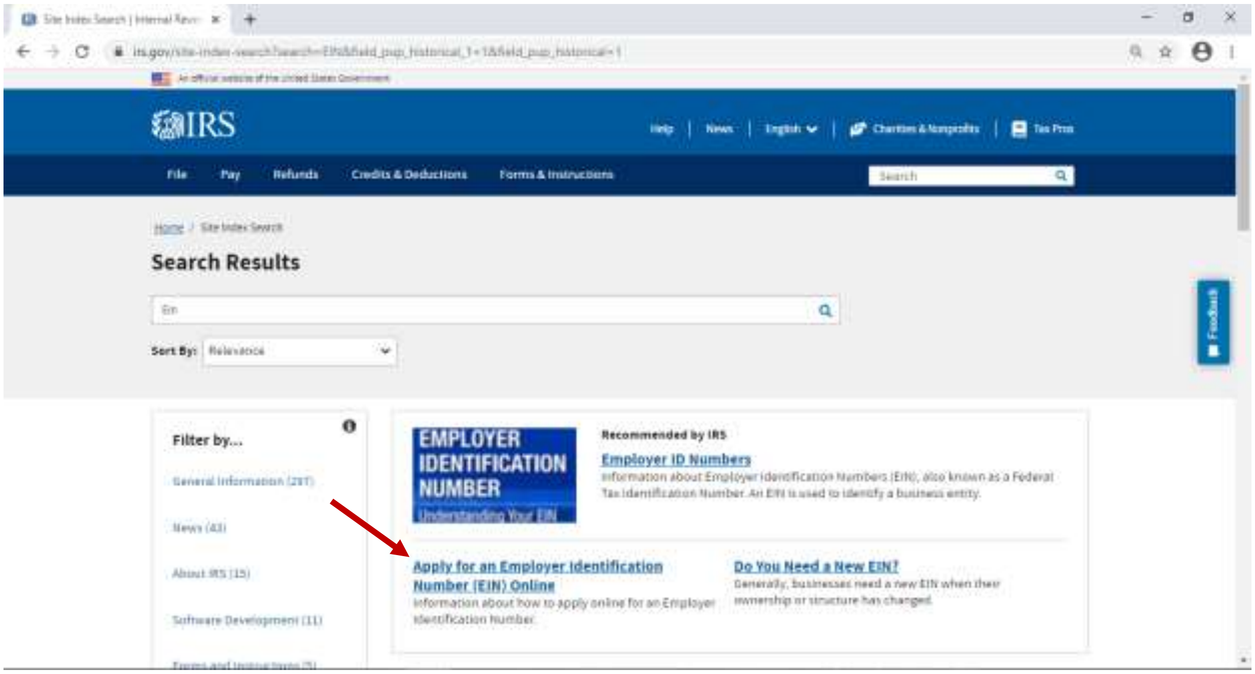
This is a step-by-step guide to obtain an Employer Identification Number (EIN) online. Before completing this step, you must have already obtained your incorporation status from the Secretary of State.

To complete a paper form instead, visit this link and search for Form SS-4.

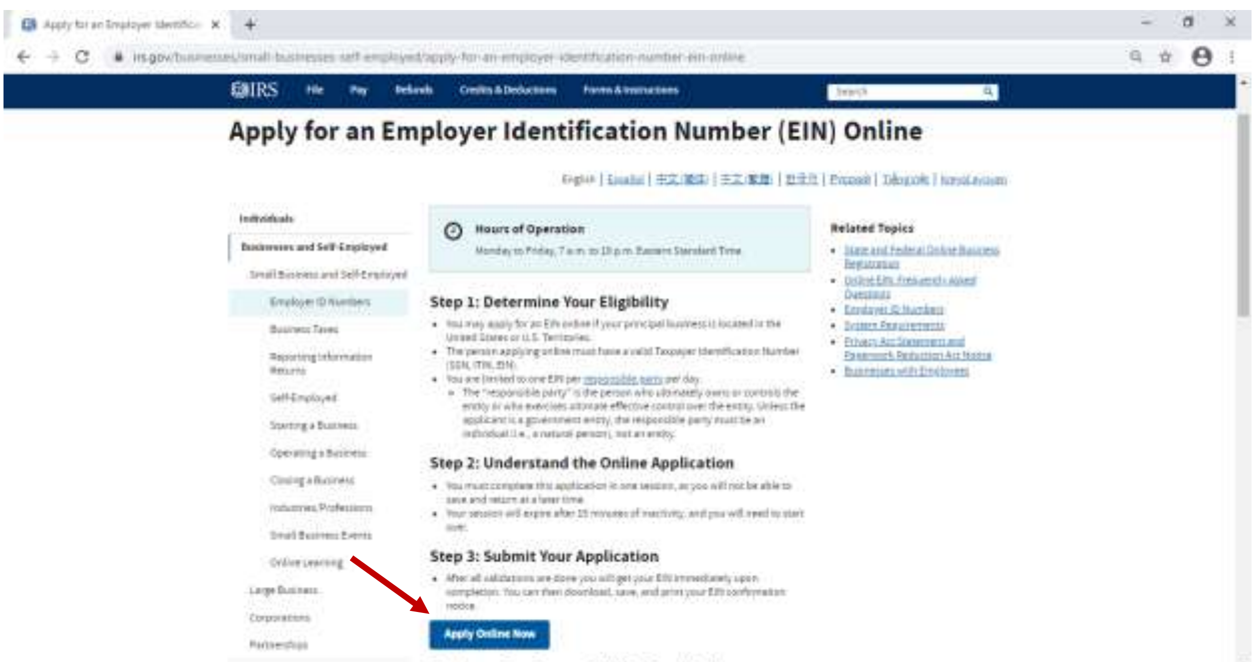
1) Visit irs.gov and search EIN in the top right corner.



2) Click “Apply for an Employer Identification Number (EIN) Online.”

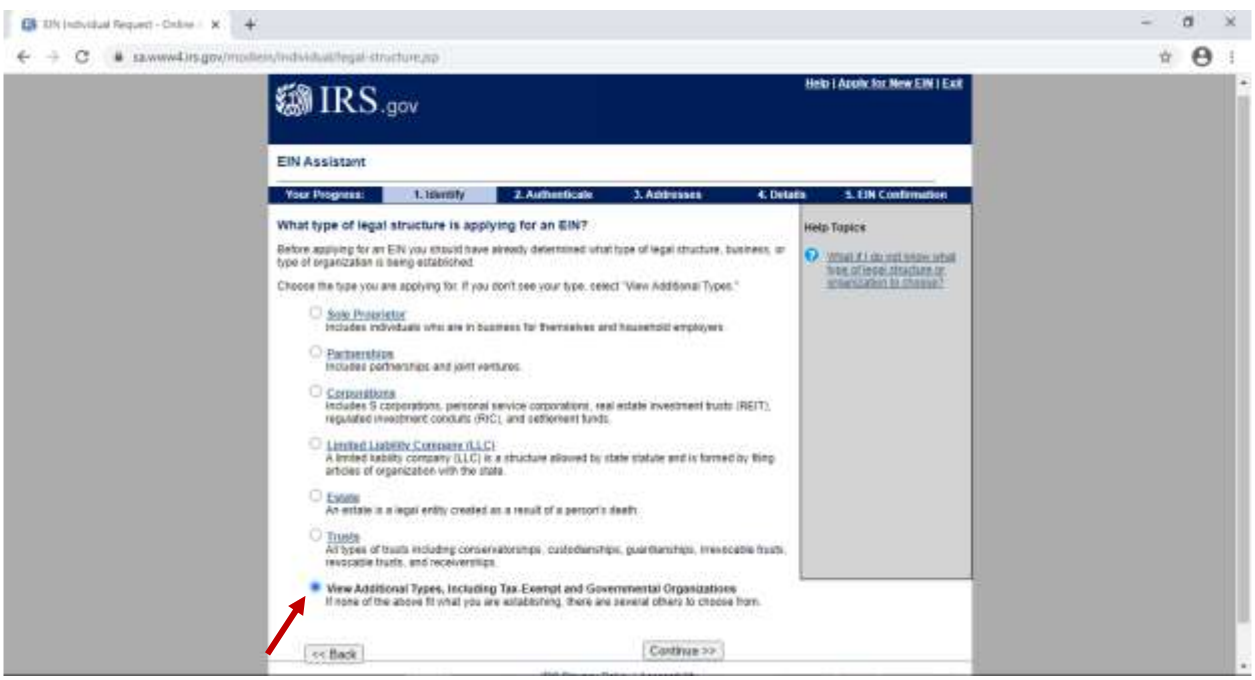


3) Click “Apply Online Now.”

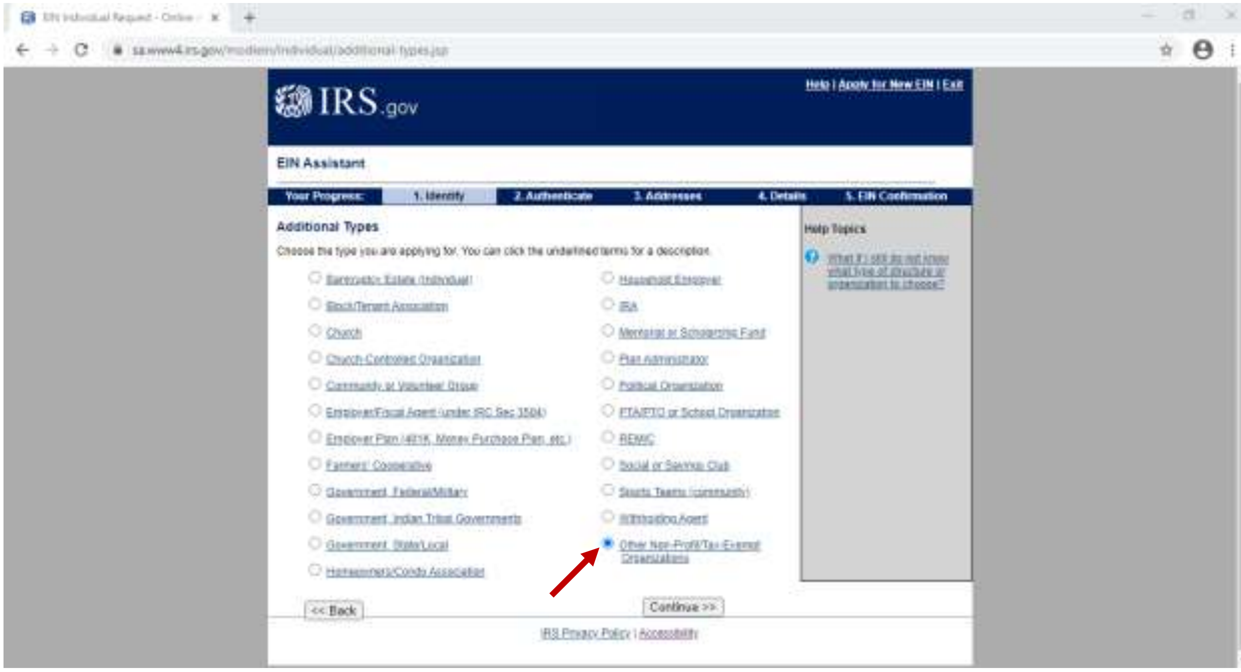


4) Click "Begin Application."

5) Select the last radio button and click "Continue."



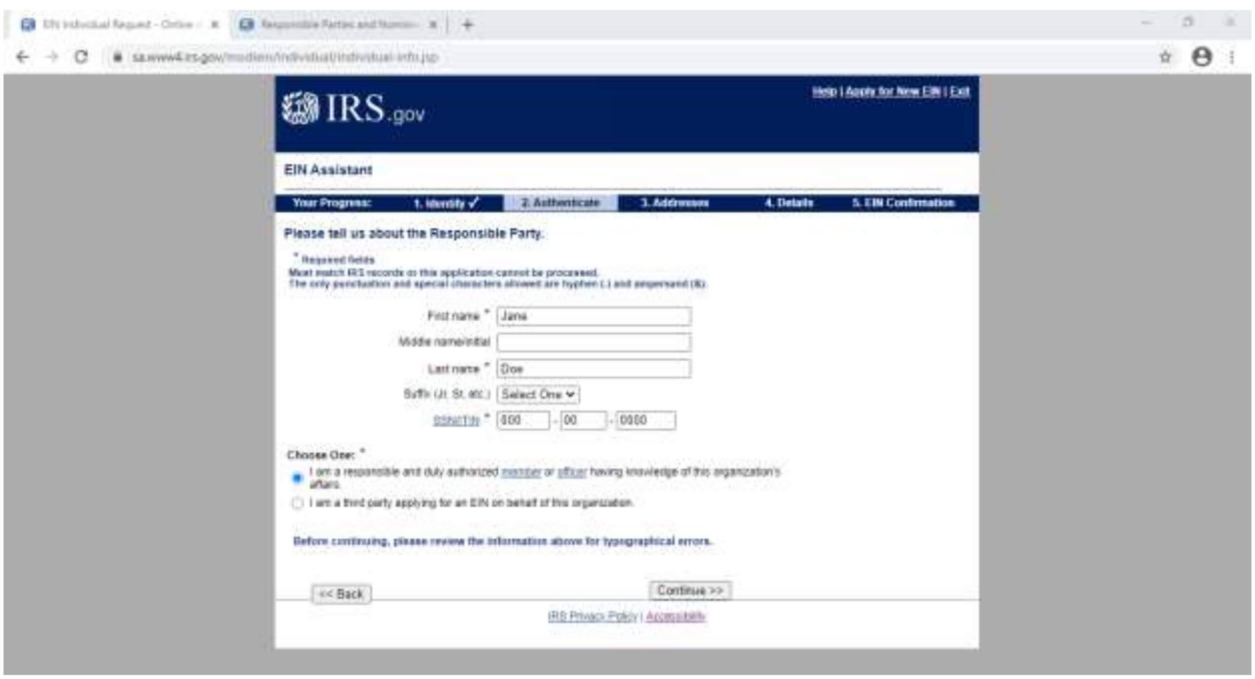
6) Select the radio button that says “Other Non-Profit/Tax-Exempt Organizations” and click “Continue.”



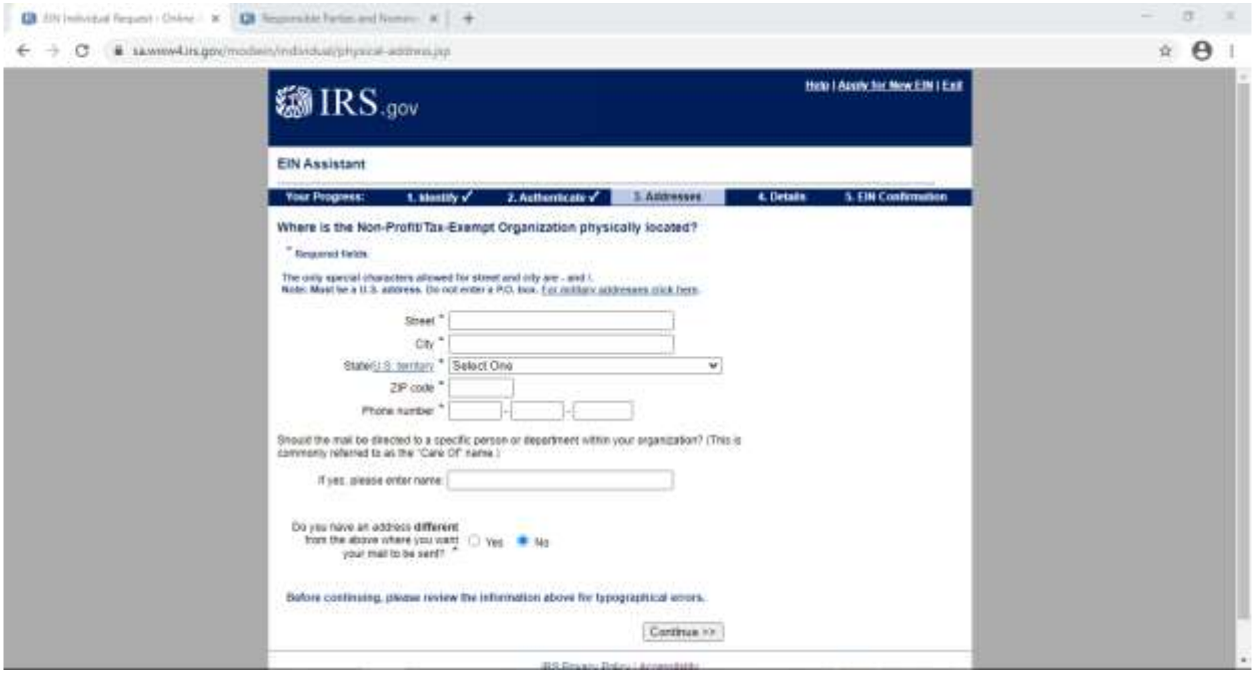
7) Click “Continue.”

8) Select the radio button for “Started a New Business” and click “Continue.”

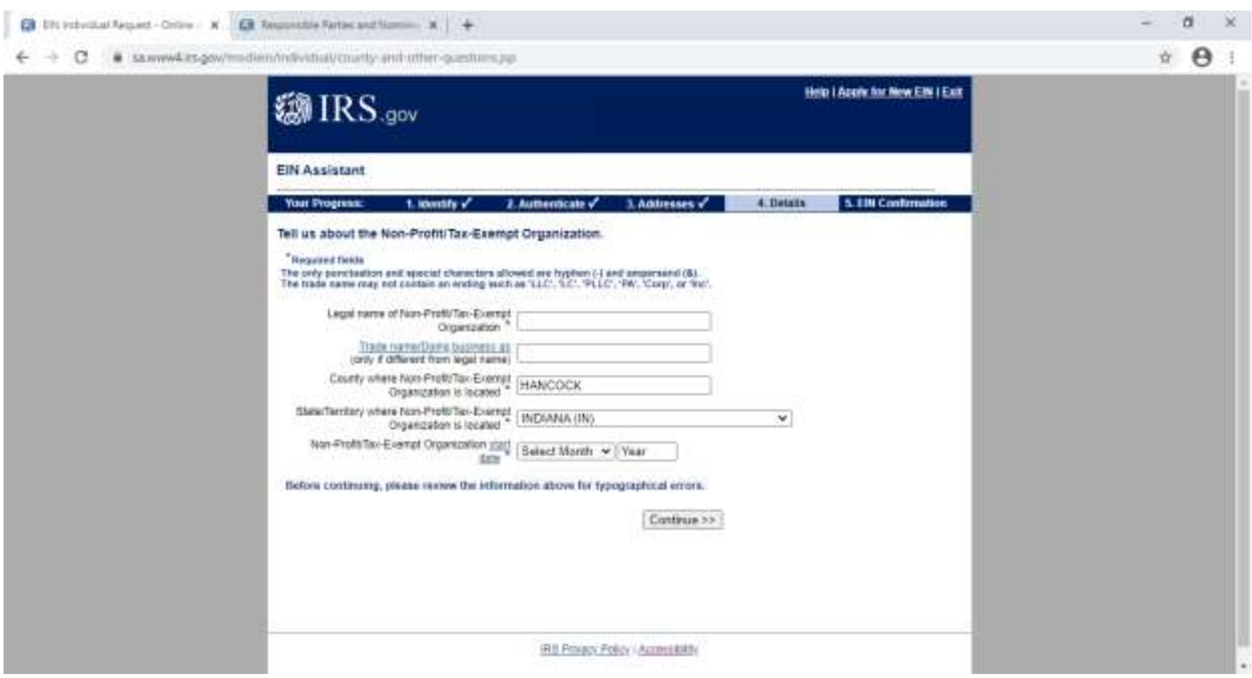
9) Enter information for the Responsible Party. [Click here] for a definition of Responsible Party. It will likely be you or whoever is leading the effort to create this nonprofit. Then select the first radio button and click “Continue.”



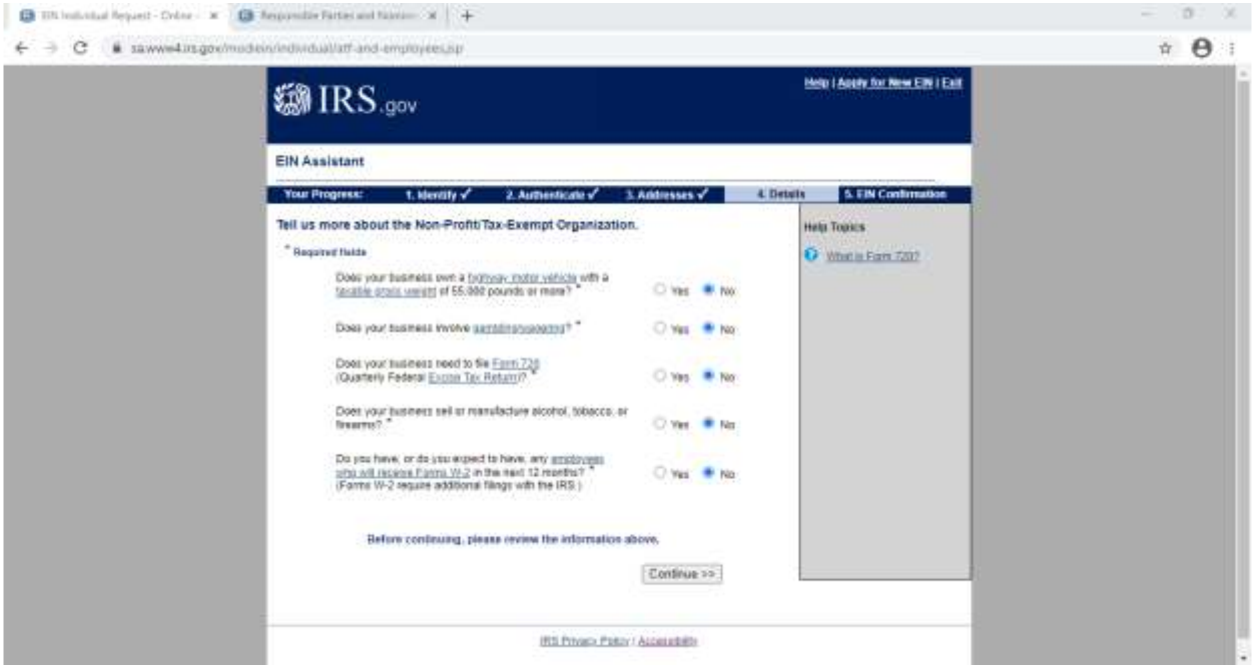
10) Complete the Address section and click "Continue."



11) Enter the name of your nonprofit organization and the date it was formed and click "Continue."



12) You will most likely select the “No” radio button for each of these scenarios and click “Continue.”



You will receive an EIN instantaneously; however, you cannot use it for tax-exempt purposes until you complete Form 1023 and your exempt-status is approved by the IRS.

INTERNAL REVENUE SERVICE (IRS)

Form 1023-EZ

Form 1023-EZ is the streamlined application for recognition of exemption under Section 501(c)3 of the Internal Revenue Code. There is a checklist of 26 questions to see if your organization is eligible. Find the checklist here.

If you are not eligible for Form 1023-EZ, you may still fill out Form 1023. See Page 27 for guidance.

If you are eligible to file Form 1023-EZ, you must register for an account on Pay.gov to submit Form 1023-EZ and the $275 filing fee.

To complete the form, you will need:

- Contact information (address, phone, email, etc.)
- EIN
- List of board members and addresses (remember you need at least 3)
- Incorporation information (date incorporated, type of incorporation)
- NTEE Code (find description here and list of codes here)

You should also be prepared to answer questions about how public funds would be used, gaming, and participation in political campaigns.

As the name suggests, Form 1023-EZ is substantially easier to complete than the full Form 1023. It also carries a shorter wait time for approval (as little as 2 weeks). However, even if you are eligible for 1023-EZ, you should consider the pros and cons. For instance, some grantmakers will not fund charities that received 501(c)3 status using the streamlined process. Here is a list of other pros and cons.

Keep a copy of the completed Form 1023-EZ for your permanent records.

INTERNAL REVENUE SERVICE (IRS)

Form 1023

Form 1023 is the application for recognition of exemption under Section 501(c)3 of the Internal Revenue Code. This form will take substantial time to complete.

To begin, you must register for an account on Pay.gov. You will complete and submit the form electronically, and well as submit the filing fee. Find the instructions here.

The fee for filing the form is $400 if gross receipts over 4 years do not exceed $10,000 or $850 if gross receipts over 4 years will exceed $10,000.

To complete the form, you will need:

- Certified copy of Articles of Incorporation with certification of filing
- Copy of bylaws
- Narrative description of past, present, and planned activities
- Names and addresses of officers, directors, and trustees
- Conflict of interest policy
- Written description of each of the ways you intend to fundraise
- Past financials or expected financials (budget) for the next 3-4 years

If all documents are in order and there are no questions from the IRS, you can expect the wait time to be about 3-6 months. If there is an adverse ruling and you appeal, the process will take much longer.

Top 10 Reasons for Delay

1) Not enough financial data
2) Annual accounting period
3) Officers and board members are incomplete
4) Exempt activities are incorrect
5) Incomplete schedules
6) Failure to complete all pages
7) Signatures
8) Bylaws are missing in incomplete
9) Articles of Incorporation are missing in incomplete
10) Incorrect or no fee

ONGOING LEGAL REPORTING

Federal Tax Return

Your organization must file one of these returns annually depending on your receipts and assets.

990 Postcard

Federal tax return if gross receipts are normally $50,000 or less

- To be filed by May 15 each year for the previous calendar year (if year-end is 12/31).
- Must be filed electronically.
- File online here.
- You will only need to know the following to file:
  - Employer identification number (EIN), also known as a Taxpayer Identification Number (TIN).
  - Tax year
  - Legal name and mailing address
  - Any other names the organization uses
  - Name and address of a principal officer (Board President)
  - Web site address if the organization has one o Confirmation that the organization's annual gross receipts are $50,000 or less
  - If applicable, a statement that the organization has terminated or is terminating (going out of business).
- Additional information can be found here.
- Once you file the postcard, print a confirmation and keep for your records.

990-EZ

Federal tax return if gross receipts are less than $200,000 and total assets less than $500,000

- Two page return
- To be filed by May 15 each year for the previous calendar year (if year-end is 12/31).
- May be filed electronically or mailed.
- Recommended that a professional or experienced volunteer or board member prepare and file this return.

990

Federal tax return if gross receipts are more than $200,000 and total assets more than $500,000

- Long return – asks for financial information and well as a lot of informational questions
- To be filed by May 15 each year for the previous calendar year (if year-end is 12/31).
- May be filed electronically or mailed. Electronic filing only required for "large organizations" having over $10 million in assets.
- Recommended that a professional or experienced volunteer or board member prepare and file this return.

Have a unique situation or not sure which to file? Learn more here.

You will receive NO reminder from the IRS that the 990 return is due.
You must proactively remember to file this return. If you fail to file for 3 years, the IRS will revoke your organization's 501(c)3 status. The return is due 5 ½ months after your fiscal year end.

State Filings

NP-20

- To be filed by May 15 each year for the previous calendar year (if year-end is 12/31).
- One-page form to complete.
- Now have the option to file online or mail in the form
- Download and complete the NP-20 PDF form here: https://www.in.gov/dor/3506.htm
- Mail completed form to address listed on PDF. Must also include a copy of your Board of Directors (names, titles, addresses) and a copy of your completed 990 Postcard.
- You will receive NO reminder from the state that this return is due.

Business Entity Report

- Due every two years. The report is due during the anniversary month of your organization's formation.
- Must be submitted electronically.
- File online here (click "File My Business Entity Report" in the middle of the page).
- The report asks you to confirm basic information (address and officers) and confirms that you are still an active organization in the State of Indiana.
- Once you create an account, you will be able to see your due date. They will also email you reminders when a report is due.
- Small fee for filing (less than $10).

Addendum A

Consultants

Aly Sterling Philanthropy

Jen Pendleton, Vice President - IN
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Indianapolis, IN
jen@alysterling.com
www.alysterling.com

Areas of Expertise
Board Development
Fundraising & Donor Relations
Governance & Administration
Mission & Strategy

Asher Agency

Anthony Juliano, VP – General Mgr.
260-424-3373
Indianapolis, IN
anthonyj@asheragency.com
www.asheragency.com

Areas of Expertise
Communications/Marketing

Bookkeeping Plus, Inc.

Beth Marsh, CEO
317-462-2049
232 E. McClarnon Dr.
Greenfield, IN 46140
bethm@bookplusinc.com
www.bookplusinc.com

Areas of Expertise
Financial Management

Bright Corner Group

Jenny Banner, Founder
317-258-3886
6219 Guilford Ave.
Indianapolis, IN 46220
jenny@brightcornergroup.com
www.brightcornergroup.com

Areas of Expertise
Communications/Marketing
Leadership & Organizational Culture

Community Solutions

Lena Hackett, President
317-423-1770
10 S. New Jersey St.
Indianapolis, IN 46204
lena@communitysolutionsinc.net
www.communitysolutionsinc.net

Areas of Expertise
Board Development
Fundraising & Donor Relations
Governance & Administration
Leadership & Organizational Culture
Mission & Strategy
Program Outcome Measurement

Cross Creative Marketing

Greg Cross, President
317-572-7677
2 W. Main St.
Greenfield, IN 46140
greg@crosscreativemarketing.com
www.crosscreativemarketing.com

Areas of Expertise
Communications/Marketing

Estep Burkey Simmons CPAs

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765-284-7554
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Muncie, IN 47305
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www.ebscpa.com

Areas of Expertise
Financial Management

The Fundraising School

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Areas of Expertise
Fundraising & Donor Relations

Good Seeds LLC

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Areas of Expertise
Board Development
Governance & Administration
Leadership and Organizational Culture
Mission & Strategy
Program Outcome Measurement

Imperative Co. Marketing

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Areas of Expertise
Communications & Marketing

Intentional Coaching + Consulting

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Areas of Expertise
Leadership and Organizational Culture

InvigorateHR

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Areas of Expertise
Human Resources Management

Limelight Analytics

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Areas of Expertise
Program Outcome Measurement

Loring Sternberg & Associates

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Areas of Expertise
Board Development
Fundraising & Donor Relations
Governance & Administration
Mission & Strategy

Manship Consulting, LLC

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Areas of Expertise
Communications/Marketing
Fundraising & Donor Relations
Governance & Administration
Mission & Strategy

Maxwell Planning LLC

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Areas of Expertise
Board Development
Governance & Administration
Mission & Strategy

Metamorphosis Change Agents

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Areas of Expertise
Board Development
Governance & Administration
Leadership & Organizational Culture
Mission & Strategy
Transition/Succession Planning

Rozzi & Associates

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Areas of Expertise
Board Development
Communications/Marketing
Fundraising & Donor Relations
Governance & Administration
Leadership & Organizational Culture
Mission & Strategy
Transition/Succession Planning

Transform Consulting Group

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Mission & Strategy

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