THE PRIVATE BRIEF · NONPROFIT GOVERNANCE

What It Costs to Start a Private Foundation in New York

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IN BRIEF

- The government fees to form a New York private foundation are small: $75 to the Department of State for the certificate of incorporation and a $600 IRS user fee for Form 1023, plus optional expedited state handling and a $25 Article 7-A registration fee only if the foundation will ask others for money.
- The legal work costs more than for an ordinary public charity because the documents, the application and the governance must anticipate the private foundation rules on self-dealing, payout, business holdings, investments and expenditures. The firm's published flat fee for that work is on its Foundation Launch page.
- The real question is the running cost: an annual Form 990-PF, a 1.39 percent excise tax on net investment income, a New York report fee set by net worth, accounting and administration, alongside a payout built on a 5 percent minimum investment return.

The question usually arrives by email, late in the evening, after the family has talked it through: before we go any further, what is this going to cost? It is exactly the right question, and it deserves a straight answer.

The answer comes in three parts: what the government charges to get the foundation started, what drives the cost of the legal work, and what the foundation will cost to run every year once it exists. The third part matters most, and it is the one families tend to ask about last.

What the government charges to get started

The government fees are public, and small next to everything else:

- **New York certificate of incorporation.** The Department of State charges $75 to file a not-for-profit certificate of incorporation. Its page lists optional expedited handling at $25 per document for 24-hour processing, $75 for same-day and $150 for two-hour.
- **The federal tax ID.** The IRS issues an employer identification number online, free.
- **The IRS application.** The IRS user fee for Form 1023, the application for recognition as a tax-exempt charity, is currently $600, paid through Pay.gov when the application is filed. The shorter Form 1023-EZ costs $275, but a foundation holding more than $250,000 in assets cannot use it, and a private operating foundation cannot use it at all.
- **New York registration.** A foundation that will ask others for money must register under Article 7-A of the Executive Law, which sets a $25 registration fee. A foundation funded only by the family registers under the Estates, Powers and Trusts Law instead, whose fee schedule applies to the annual reports described below.

So at the government window, a straightforward formation for a family that is not soliciting comes to $675 ($75 to the state and $600 to the IRS), plus any expedited handling you choose. Everything else is the legal work and the years that follow.

What drives the legal cost

The legal work is where most of the cost of formation sits, and it is fair to ask why a private foundation takes more of it than an ordinary public charity does. There are real reasons.

The documents are written against a different body of law. A private foundation lives under rules a public charity never meets. The IRS describes an excise tax on the net investment income of most private foundations and "five provisions that impose excise taxes on private foundations, foundation managers, or other disqualified persons that engage in certain prohibited acts": self-dealing with insiders, failing to pay out enough each year, certain business holdings, investments that jeopardize the charitable mission, and certain expenditures. Those rules shape the bylaws, the officers' powers, the compensation provisions and the conflict of interest policy, which New York law separately requires every not-for-profit corporation's board to adopt.

The application asks harder questions. Form 1023 asks about pay and about leases, contracts and loans involving the people who run the foundation. For a family board, answering it is a self-dealing review done in advance. A foundation that plans scholarships must describe its selection procedures and seek IRS approval of them before making those grants, or risk an excise tax.

What you fund it with matters. Cash and publicly traded stock are simple. Shares in a family company, real estate or art raise questions a check does not, including how the business holdings rules apply, and they take more time.

The firm prices this work as one defined-scope flat fee covering formation, the bylaws and conflict of interest policy, the EIN and organizational minutes, Form 1023, and IRS correspondence through the determination letter. The published fee is on the firm's Foundation Launch page, and the government fees above are additional and confirmed with you before filing.

The third part matters most, and it is the one families tend to ask about last.

What it costs to run, every year

Work after launch is a separate engagement, whether with this firm, your accountant or an administrator. Budget for:

- **Form 990-PF.** The IRS instructions say “A private foundation must file Form 990-PF annually, regardless of its gross receipts.” Someone has to prepare it, usually the foundation’s accountant.
- **The excise tax on investment income.** The IRS states that “for tax years beginning after Dec. 20, 2019, the excise tax is 1.39% of net investment income.” It is paid with the 990-PF, or in quarterly estimated payments if the year’s tax is $500 or more.
- **The New York annual report.** The Estates, Powers and Trusts Law fee is set by the net worth of the foundation’s charitable property, from $25 below $50,000 up to $1,500 at $50 million or more.
- **An accountant’s review or audit, sometimes.** New York’s review and audit tiers apply to charities registered to solicit. A family foundation that never asks others for money is not on the Attorney General’s list for those reports.
- **Accounting, investment management and administration**, which vary with how the foundation is run.

Then there is the payout, which is not a cost but a commitment. The IRS explains that private foundations “are required to spend annually a certain amount of money or property for charitable purposes,” starting from a minimum investment return of 5 percent of the foundation’s investment assets, with certain adjustments.

A worked example

A composite, not a client: a founder and her two adult children form a foundation funded with $4,000,000 of marketable securities, making grants to public charities. No scholarships, no employees, no real estate, no fundraising.

At formation, the government fees are $75 to the state and $600 to the IRS. The legal fee is the published flat fee on the Foundation Launch page.

Every year after that:

1. A Form 990-PF, prepared by the foundation’s accountant.
2. The excise tax. If the portfolio produces $160,000 of net investment income, 1.39 percent of that is $2,224.

3. The New York annual report. Net worth of $4,000,000 falls in the $1 million to $10 million band, so the fee is $250. As a foundation registered only under the Estates, Powers and Trusts Law, it attaches its 990-PF, not an accountant's review or audit.
4. The payout. Roughly 5 percent of the investment assets, around $200,000 before the adjustments, has to go out for charitable purposes, which for this family means grants.

Those running costs, not the formation fee, are the real question for a family deciding whether the structure is worth it. There is no legal minimum for funding a foundation. A foundation of this size can carry these costs comfortably. A much smaller one often cannot, and a donor-advised fund may serve the family better until the giving grows. We will tell you plainly which side of that line we believe you are on.

A word on timing

No fee buys speed at the IRS. The IRS reports that it issues "80% of Form 1023 application determinations within 191 days," and says many factors, including its staffing, affect that pace. Recognition is never assured: the IRS decides. What a well-prepared application does is reduce the follow-up questions, which is where months are usually lost.

Where to start

Before you call anyone, write down three things: what you will fund the foundation with, whether it will ever make grants to individuals or ask others for money, and roughly how much you expect it to give each year. Those answers set most of the formation cost and nearly all of the running cost. Then ask your accountant what preparing a Form 990-PF would cost each year, and read the scope and fee on the Foundation Launch page with those numbers beside it.

This is general information about the cost of forming and running a private foundation in New York, not legal or tax advice about your situation. Government fees and IRS processing times change, so confirm current figures before relying on them.

WRITTEN BY

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Anthony is the Managing Partner of Clemenza Law Group and serves as general counsel to a wide range of companies and philanthropic organizations. Nearly every essay here began as a real question from a real client: the contract that landed at 4 p.m., the board that meets on Thursday. He writes them the way he would answer you across the table, plainly and with care.