

Non-profit status

Tax Exempt status



and



keeping them!

DISCLAIMER

Neither Wayne Heinen NØPOH or David O'Farrell WBØIXV are attorneys. Thus, they do not give legal advice. The information on the following slides should NOT be considered legal advice. Selecting the form of organization and IRS recognition are legal issues and the advice of a qualified attorney should be sought.

Getting Started

You'll need Articles of Incorporation to be filed with the Colorado Secretary of State. Among some of the paragraphs you'll want to include are

- ❑ Purpose clause. Your organizing document must limit your purposes to those described in section 501(c)(3).
- ❑ Dissolution clause. Your organizing document must permanently dedicate your assets for a section 501(c)(3) purpose.

There are many clubs that have had successful applications for 501(c)(3) status. and their application and all applicable supporting documentation is a matter of public record. The IRS also has fairly clear instructions on what it takes to get the designation of "Tax Exempt"

A good model is Rocky Mountain Ham Radio Inc. You can see their Application at rmham.org under the Club Information Tab on the Club Business page

Getting Started

After filing your Articles of Incorporation as a non profit corporation in Colorado, a series of events needs to happen within the first year...

- The club needs to establish it's Constitution and bylaws or other operational documents
- Contact the IRS and obtain a Employee Identification Number
- Officers need to be elected or appointed to carry out assigned duties in running the corporation.
- A means of documenting the clubs activities needs to be established. The function of the Secretary.
- A means of documenting the clubs funds and assets needs to be established. The function of the Treasurer.

Decision Point

A Non profit corporation can be treated in two ways by the IRS. Answer this Question to determine what your group should do.

Will our group receive from all sources gross receipts exceeding \$5000 per fiscal year? *(Your fiscal year is determined by the month in which your organization was incorporated)*

- If Yes! You will need to file a Form 1023 “Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code”, supply the supporting documentation and pay the \$400 filing fee.

- If No! You can call the IRS after your first fiscal year, tell them that you are a nonprofit corporation that has gross receipts less than \$5000 per year and you wish to be allowed to file a 990N e-postcard. This method treats small organizations as tax exempt without having them spend the time and money to obtain the official designation.

Decision Point II

A Non profit corporation can be treated in two ways by the IRS. Answer this Question to determine what your group should do.

Will your group want to **insure** that ALL donations received will be guaranteed tax deductible to your donors?

- If Yes! You will need to file a Form 1023 “Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code”, supply the supporting documentation and pay the \$400 filing fee. Your organization will be listed by the IRS in their Tax Deductible Charity database
- If No! You will be not be listed by the IRS in their Tax Deductible Charity database. If a donor takes a deduction for a donation, it may be disallowed by the IRS. if the donor undergoes an audit by the IRS.

The “Small” Route

The Internal Revenue Code section that permits "Self-Declared 501(c)3 Nonprofits".

It's IRC Sec. 508(c)(1)(b) where it lists exceptions to filing IRS Form 1023. One exception (para. b) is "Any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than \$5,000."

And Revenue Ruling 81-177, 1981-2 C.B. 132 defines how to compute "normally not more than \$5,000", in case some years are a little more than \$5,000.

However some sources I reviewed indicate that donations to the 'Self-Declared 501(c)3's' are not deductible, and other sources indicate they 'may not be accepted' by the IRS. So if an organization really wants to be sure that donations they receive can be tax deductible for the donor, they may want to go the full route and file the Form 1023 and pay the \$400 to get an official determination.

Thanks to David O'Farrell WBØIXV of the Estes Valley Amateur Radio Club for this excellent research...

Being “Public”

In either case being open and transparent is required. A recognized 501(c)(3) must make their documents and proceedings available to the public. Some groups like ACARES and Rocky Mountain Ham Radio have documents on their website that are viewable by the public at any time. Others, like the Aurora Repeater Association, have a notice of their availability posted at their website with contact information provided.

Either way is acceptable. Part of the “public” charity’s responsibility is to abide by the IRS rules pertaining to non profit tax exempt status.

If your group is not a recognized 501(c)(3) organization, it is still a good idea to post a notice of availability or copies of your organization’s Articles of Incorporation, Constitution, By-laws and any other documents pertaining to the operation and purpose of your group.

990N ePostcard

The 990N ePostcard filing is an IRS filing that needs to be made annually to maintain your tax exempt status. It's on line and you need to answer a few questions, mostly how much did your organization take in during the past fiscal year.

If you are a Recognized 501(c)(3) you can make up to \$50,000 in gross receipts and still file this form. If you'll exceed that figure you'll need to file a different form which is beyond the scope of this presentation.

If you are not a Recognized 501(c)(3) and have obtained permission to file the 990N ePostcard, you are allowed to make up to \$5,000 in gross receipts. If you are in this category and you find you will exceed \$5,000 in gross receipts you will need to file a Form 1023 to obtain Recognized 501(c)(3) status.

Regardless of your status you need to file annually. If you miss a year, you'll receive a notice the following year and you can usually get forgiveness. If you miss three consecutive years you will lose your tax exempt status and you'll need to file a Form 1023 to regain it!

Documentation

- ❑ A means of documenting the clubs activities needs to be established. The function of the Secretary.
- ❑ A means of documenting the clubs funds and assets needs to be established. The function of the Treasurer.

You need to be able to document, from this point forward, that you are fulfilling your stated purpose in your Articles of Incorporation. The way you do this is to make sure you document your activities, your votes and keep accurate minutes of your meetings.

You need to document the acquisition date, acquisition cost, location and use of all the assets of the corporation and insure that the use is for the stated purposes listed in your Articles of Incorporation and in accordance to those activities approved in section 501(c)(3).

Donations vs Assets

When a donation is made to your organization, it may be an asset that you need to document for inventory purposes and make sure you keep track of as long as the organization has it. For a repeater club, if a member donates a repeater that you keep in reserve as a spare in case one of your repeaters goes down. That is an asset.

If a member donated his old HF rig, your repeater club probably has no immediate use for this. You will want to document its receipt and keep this available until such time as the club sells the item. This item would be sold and the proceeds will become part of the organizations gross receipts for the fiscal year in which it was sold.

The IRS places the responsibility of valuing the donation on the donor and not the recipient. The member may, at his discretion, write off what he feels the value was at the time of the donation. However, your organization need only report the actual cash realized upon the sale of the donation. There is no connection between the two values.

Why Documentation?

As a public charity, your records are open to the public. Your application, your minutes, your books. This documentation, by law, must be made available. Most groups are not aware of this part of the law. A request to review your minutes or your books can be made by any member of the public.

You also make statements to the IRS concerning your gross receipts and the use of your assets. The IRS can, at any time, audit a non profit the same way that they can audit your individual income tax return. Since your group is filing on line with a simple statement of your gross receipts, you need detailed records to prove, if necessary, that you still deserve your tax exempt status.

Your books should consist of an income and expense ledger documenting all dues, contributions, and donations of cash, goods and equipment.

A separate accounting of cash and other assets is a good idea, this will allow rectification of any bank account or accounts that the organization may have.

Donations & Documentation

Goods and equipment need to be documented at a fair market value for the purpose of determining your gross receipts for your fiscal year.

A little more on fair market value. If your group receives items that are not of immediate use to the group you can elect to sell the items and place the funds in the organization's treasury. The amount that you sell the items for becomes the fair market value and the amount added to your fiscal year gross receipts. Make sure that you document the items received, the disposition as sold at a ham fest or through a swap list and the cash received. Take care that you don't liquidate items to organization members or friends at prices that are clearly below what an item might reasonably sell for. If you let a perfectly good condition Astron RM-50 power supply go for \$25, the red flags could start flying!

If a donor wants you to value the property for tax deduction purposes, **Don't!** It is the taxpayer's responsibility to ascertain the value of their donated items. You can recommend sources, eBay, swap lists and other venues that handle used equipment. You can and should acknowledge any monetary contributions with a receipt for the dollar amount donated.

501(c)(3) DON'T's

- ❑ Spending your groups money on purely social activity is frowned on by the IRS. Although spending for a potluck or other activities held in conjunction with an activity that is within the scope of your “Purpose” statement would be acceptable.
- ❑ Political activity and spending money on any political agenda is not permissible. Check the RM Ham application for the wording of an acceptable way concerning amateur radio.
- ❑ Expending of funds for the benefit of officers and members. Just because someone would like a new MOTOTRBO radio, your group should not be contributing to the purchase of one for the benefit of any one member.
- ❑ Co-mingling of funds or assets with organizations who do not share the same tax exempt status and a similar “Purpose” statement is frowned on by the IRS.

501(c)(3) DON'T's

- ❑ When assets are idle it is a good idea to let them remain idle with the exception of occasional testing to ensure their proper operation. If the organization has a spare APRS setup it shouldn't become the active APRS unit of a particular member when idle. The organization's equipment needs to be accessible to all members and be used in a manner that is consistent with your "Purpose" statement.
- ❑ Make sure you do not engage in any conduct that is contradictory to what was stated in your Form 1023 application. If you no longer have a copy of the document - find a new Form 1023 and use it as a guide for what not to do until you can obtain a copy of your Form 1023
- ❑ In the event that you don't have a copy of your Form 1023, you can file a "Request for Public Inspection or Copy of Exempt or Political Organization IRS Form using IRS Form 4506-A

IRS References

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations>

<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Life-Cycle-of-a-Public-Charity>

http://www.irs.gov/pub/irs-tege/Life_Cycle_Public_Charity_graphical.pdf

http://www.michaelmalamut.com/articles/2009Q1_-_Tax_-_Very_Small_Nonprofits.pdf