

Non-profit status

Tax Exempt status



and



keeping them!

DISCLAIMER

Wayne Heinen NØPOH is not an attorneys. Thus, I 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 to become a non-profit corporation. Two paragraphs that need to be included 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 nonprofit corporation in Colorado, a series of events needs to happen within the first year...

- The club needs to establish its Constitution and bylaws or other operational documents
- Contact the IRS and obtain an Employee Identification Number
- Officers need to be elected or appointed to carry out assigned duties in running the corporation.

Documentation

- ❑ A means of documenting the club's activities needs to be established. The function of the Secretary.
- ❑ A means of documenting the club's 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 ensure that the use is for the stated purposes listed in your Articles of Incorporation and in accordance with those activities approved in section 501(c)(3).

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 and the Colorado Secretary of State concerning your gross receipts and the use of your assets. The IRS can, at any time, audit a nonprofit the same way that they can audit your individual income tax return. You need detailed records to prove, if necessary, that you 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, this will allow rectification of any bank account.

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.

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 is valued at fair market value and it becomes part of the gross receipts in the fiscal year it was received.

If a member donated his old HF rig, your repeater club probably has no immediate use for this. You will want to document when it was received 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 organization's 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 donor 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.

Becoming Tax Exempt

A Nonprofit 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 or 1023-EZ “Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code”, supply the supporting documentation and pay the filing fee.
- If No! IRC Sec. 508(c)(1)(b) 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." You can call the IRS after your first fiscal year and ask 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.

Which Form?

If you answered “Yes” to the previous question, it’s time to decide how to file.

Answer this question for the IRS. “Has your group’s gross receipts exceeded \$50,000 in any of the three prior years, or do you expect to receive more than \$50,000 in gross receipts this year?”

If you answer “Yes” you need to use Form 1023 and the fee for that form is \$600.00

If the answer is “No” go to:

<https://www.irs.gov/pub/irs-pdf/i1023ez.pdf>

...and get the Form 1023-EZ instructions and answer the remaining 28 question. If all the answers are “No” then the EZ form is good for you. The filing fee for the EZ form is \$275.00.

If you answer “Yes” to any of the questions you need to use Form 1023 and the fee for that form is \$600.00

Most Amateur Radio organizations fall in the EZ category.

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 nonprofit 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.

Soliciting Donations?

Registering Under the Colorado Charitable Solicitations Act

Do I need to register?

“All charitable organizations who plan to solicit contributions, have contributions solicited on their behalf, or participate in charitable promotions must register by law, with only a few exceptions.”

...and believe me the exceptions do not apply to amateur radio.

This application requires that good records be kept to ensure that your statements are accurate, and that the State will approve your organization to solicit funds in Colorado.

Go to <https://www.sos.state.co.us/> and look under Charities and Fundraisers.

Be Prepared

Charitable organization			
Name	ROCKY MOUNTAIN HAM RADIO INC.		
Other names (DBAs)			
Status	Good as of 10/02/2020		
Expires on	01/15/2022	Initial registration	04/25/2019
Registration #	20193011490	Established	05/24/2010, Colorado
EIN	45-2928518	Form	Corporation
Street	5236 BEAR MOUNTAIN DRIVE, EVERGREEN, CO 80439		
Mailing			
County	JEFFERSON		
Phone	303-709-9388		
Website	RMHAM.ORG		
NTEE codes	PUBLIC SAFETY,DISASTER PREPAREDNESS, & RELIEF; UNKNOWN		
Charitable purpose	FROM ARE ARTICLES OF INCORPORATION THE PURPOSE FOR WHICH THE CORPORATION IS ORGANIZED IS TO CONDUCT ANY AND ALL LAWFUL BUSINESS FOR WHICH NON-PROFIT CORPORATIONS CAN BE ORGANIZED PURSUANT TO COLORADO STATUTES INCLUDING BUT NOT LIMITED TO: A) PROVIDING COMMUNICATIONS ASSISTANCE TO GOVERNMENTAL, CHARITABLE AND OTHER QUALIFIED ORGANIZATIONS B) THE PROMOTION, OPERATION AND SUPPORT OF AMATEUR RADIO ROUTINE AND EMERGENCY RESPONSE ACTIVITIES C) TO FURTHER THE EXCHANGE OF INFORMATION AND COOPERATION AMONG MEMBERS D) TO PROMOTE RADIO KNOWLEDGE AND FRATERNALISM AND TO ADVANCE THE INTEREST AND WELFARE OF AMATEUR RADIO IN THE COMMUNITY. WE SERVE A VARYING NUMBER OF OTHER CHARITABLE ORGANIZATIONS AND GOVERNMENTAL AGENCIES IN COLORADO BY PROVING PUBLIC SERVICE AND EMERGENCY COMMUNICATIONS UPON REQUEST. WE HAVE A ORGANIZATION WEBSITE AND CONDUCT EDUCATIONAL CLASSES THROUGH OUR "RM HAM" UNIVERSITY		
Tax-exempt code	501(C)(3)	Donations tax deductible?	Yes

Your “Charitable Purpose” section for this filing may mirror your corporate filing but going into much more detail will convince the State of your Charitable intentions!

The State wants to make sure you are legit and that you are not out to fleece the public in your solicitations.

The big one in this filing is the Profit and Loss statement and the reporting of the assets of the corporation.

Attention to details and making sure that your numbers balance is essential!

The State filing and its approval is due annually and are cumulative report!

You Will Prepare This

Revenue (Amounts Received During the Year):

Contributions: \$0.00

Government Grants: \$0.00

Program Service Revenue: \$0.00

Investments: \$0.00

Special Events and Activities: \$0.00

Sales: \$0.00

Other: \$0.00

Total Revenue (sum of all revenue items above):

Financial Summary as of most recent fiscal year end

Expenses (Amounts Paid Out During the Year):

Program Services: \$0.00

Administration - Management and general: \$0.00

Fundraising: \$0.00

Total Expenses (sum of expense items listed above)

Summary of Balance Sheet as of Fiscal Year End:

Total Assets, End of Year: \$0.00

Total Liabilities, End of Year: \$0.00

Net Assets, End of Year (Total Assets - Total Liabilities):

990N ePostcard

The 990N ePostcard filing is an IRS filing that needs to be made annually to maintain your tax-exempt status. It's online and you need to answer a few questions, like 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 check the rules to see if you need to file a different form.

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 check the rules to see if you 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!

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 Motorola DMR 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 except for 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 Purpose clause.

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

State References

<https://www.sos.state.co.us/pubs/business/fileAForm.html>

<https://www.sos.state.co.us/pubs/charities/charitableHome.html>