

A GUIDE TO FORMING A NONPROFIT ORGANIZATION IN THE STATE OF MASSACHUSETTS

Below are listed the steps that are necessary to form a nonprofit organization in Massachusetts, based on my experience helping to set up the Rehoboth Country Dance Society (RCDS) as a 501(c)(3) organization, starting in October 2000. The steps can take a few months, depending on how fast the state and federal departments process the applications. The RCDS had to wait five months to hear back about the status of its application for state incorporation, but then received its confirmation of provisional nonprofit status from the IRS only three weeks after filing the appropriate forms. The final confirmation of federal 501(c)(3) status for the RCDS was received in March 2005.

Please be aware that certain changes in the regulations were made after the RCDS initiated its application in 2000. I do not think that these amendments are substantial, but you will have to look into this, if you are considering filing in the state of Massachusetts. Also, applications must be filed with the Attorney General's office—something that we were not aware of when we first became incorporated as a nonprofit in MA. You will have to look into the requirements for this as well. Lastly, the fees involved in forming a nonprofit may have increased over the past decade.

1. Form a board of directors and elect officers

You want at least a president, vice-president, treasurer, and secretary. Having additional board members at large is also helpful.

2. Draw up bylaws

It is important that an educational/cultural element be included for the 501(c)(3) status that is your ultimate goal.

3. File articles of organization as a corporation with the secretary of state

The next step is to become incorporated in your state. The form we were required to fill out and file is titled Articles of Organization (General Laws, Chapter 180). After doing so, we were later required to file an amendment to the state incorporation papers in order to satisfy the Internal Revenue Service (see note 7 below). The fee for incorporation in Massachusetts was \$35.00.

4. You will receive notification of incorporation from the state

But you need to check periodically. Our original application was sent in on October 15, 2000, and approved on October 31, 2000, but we were never notified. I had been told that it might take a while, and that the office was backed up with work. Finally, five months later, after calling again in March 2001, I was sent copies of the original articles of incorporation with the state secretary's stamp on them. So you may need to persist to make sure that this step doesn't get slowed down too much.

5. Apply for a federal Employer Identification Number (EIN)

Even if your organization doesn't pay anyone a salary (relying on volunteers to do the work), you still need to have a federal EIN. So after you are incorporated, you need to fill out form SS-4 and file it with the IRS. I believe that I called in, got the EIN over the phone, and then added it to the application form, which was then mailed in to the IRS.

6. Apply for federal recognition of exemption under Section 501(c)(3)

Armed with your status as a state corporation and with your EIN, you can now apply for federal tax-exempt status as a nonprofit organization. To this end, you need to submit three forms.

Form 8718. You submit this form with the fee that is charged for applying for nonprofit status. If your annual gross receipts are expected to be below \$10,000 for the first four years, the fee is \$150. If your gross receipts are expected to be over \$10,000, the filing fee is \$500. A small organization just starting out would probably pay the smaller amount. **Please note:** These figures may have changed by now.

Form 1023. This is the application for recognition of exemption under Section 501(c)(3) of the Internal Revenue Code. This form is where you give details about the organization, attaching separate sheets where needed.

Form 872-C. This form has to do with the organization not paying taxes during the advance ruling period. After you file it, it will be mailed back to you with the date and the IRS officials' names stamped on it.

7. Notification from IRS of tax-exempt status

The IRS says that you will receive notification about your application within 120 days. Because our documentation was for the most part complete and correctly filled out, we heard back in less than three weeks.

First, I received a fax, acknowledging the receipt of the application for tax-exempt status.

Then, I received a phone call from an agent, explaining that everything was in order except that certain statements needed to be included in the articles of incorporation for

the state (I can't remember, but perhaps we had to include a copy with the federal form). I faxed back an agreement to amend the articles of incorporation to include the specific terminology that the IRS sent in the fax.

Then, I had to file articles of amendment with the state, adding the paragraphs that the IRS had sent to me (see below). It cost \$15 to file the articles of amendment. However, this extra step can be avoided by including the paragraphs in your original articles of incorporation.

Finally, I received the letter of determination that recognized the Rehoboth Country Dance Society as being exempt from federal tax as a 501(c)(3) organization. This status is granted on a temporary basis in what is called an "advance ruling period," which extends four years (the ruling period starts with the filing date of your application). At the conclusion of this advance ruling period, another report needs to be filed showing that the organization, its aims, and its sources of support have not changed. Then a final determination of the foundation status of the 501(c)(3) organization is made; this is a permanent ruling.

If gross annual receipts are less than \$25,000, the organization does not need to file Form 990. Form 990 is required when receipts are over \$25,000, even if the organization is deemed to be tax-exempt. **Please note:** The regulations have changed so that even organizations that bring in less than \$25,000 are required to file an annual e-Postcard with information about income and its breakdown into categories.

8. Apply for sales tax exemption from your state

Once you have received your letter of determination from the IRS declaring that you are tax-exempt during the advance ruling period, you can apply for sales tax exemption with your local state department of revenue. When approved, you will receive a certificate in the mail. When making purchases for your organization, you show the certificate, and you should not have to pay any sales tax. Some stores may require you to fill out an application form before recognizing the nonprofit status of your organization.

9. Open checking account

Once you have your letter of determination from the IRS, you can open a checking account as a nonprofit organization. Banks often give nonprofits a break, not charging so much for service fees or check orders, etc. Have the organization's name and address printed on the check, and be sure that at least two people can sign on the account—probably the treasurer and some other officer or board member.

You can pay the state and federal filing fees with money orders during the process of setting up your organization, i.e., before you receive nonprofit status and open the checking account.

10. File annual reports

Please note: This information has been updated to include the attorney general's report and new IRS regulations.

Once you are incorporated, you need to file annual reports with the secretary of state and the attorney general. In Massachusetts, the filing fee for the secretary of state's annual report is \$15, and the deadline is November 1. The filing fee for the attorney general's annual report is \$35, and the deadline is May 15 (but the report can be filed any time once the new year starts). The deadline for the annual e-Postcard filing with the IRS is May 15. There is no filing fee for the IRS's report.

Below is the text that the IRS wanted to have included in our articles of incorporation. I had to file an amendment, but if you include this language the first time around, it should be OK.

AMENDMENTS TO ARTICLES OF INCORPORATION (STATE OF MASSACHUSETTS)

Amendment to Article 2

1. The organization is organized exclusively for charitable, religious, educational, and/or scientific purposes under section 501(c)(3) of the Internal Revenue Code.

Amendments to Article 4

1. No part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

2. Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

January – December our Fiscal Year

Yearly

2 State Reports

Attorney General w/fee

Secretary of State w/fee

1 Federal Report

Press releases – who and where

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