



Becoming A Non-Profit Organization

River and watershed organizations range widely in their formal structure – some are loosely defined groups of river enthusiasts, others work under another organization’s fiscal sponsorship, and others have a formal structure that includes Internal Revenue Service tax-exempt status. In choosing how to structure your own organization, you will be making some important decisions on the issues of incorporation, bylaws, nonprofit status and tax-exempt status. You will want to consider these decisions carefully, as they will affect how your organization conducts its business, raises funds and handles financial reporting. The goal of this guide is to provide you some basic information regarding becoming a nonprofit organization, and to help you determine the appropriate organizational structure for you.

Building a Strong Organization Requires...

(Adapted from *Starting Up – A Handbook for New River and Watershed Organizations*, River Network)

- A compelling action plan to benefit the river;
- A strong fundraising plan that commits the entire board to raising the needed funds;
- A strategy for recruiting and retaining volunteers – including board members;
- A thought-out public relations campaign to sell your vision and action agenda to the public, other groups, public officials, resource agency staff, and other stakeholders you consider your “customers.”

Should You Form an Organization?

In deciding whether to form a new river or watershed organization, consider the following questions:

Is there a need? – Can the river or watershed that you are interested in benefit from your efforts? Is there another organization doing similar work in the watershed, using similar tactics?

Do you have a group of core supporters? – Five to ten enthusiastic and committed supporters can be all it takes to get an organization off the ground.

Where will you get the money? – Whether to send out a mass mailing seeking members, develop an educational brochure, or buy office supplies, you will need some money to get started.

Do you have a plan? – How will your organization go about carrying out its mission? What are your goals, and what tactics and activities will you undertake in your effort to reach your goals? Developing these ideas will be key to getting members, raising funds, and gaining visibility in your community.

Fiscal Sponsorship

In some cases, it might be useful to have another organization that is a 501(c)3 serve as your “fiscal sponsor.” This arrangement may be useful if you lack the resources needed to cover start-up costs, or if you expect to serve as an ad-hoc group that may not exist in the long-term. Such a relationship is typically defined by a legal agreement that establishes the roles and responsibilities of each organization, and any payment due to the sponsor for their services. Because the “parent organization” is the legally responsible party, it has the ultimate control over grant management and financial management decisions. For sample “Fiscal Sponsorship” agreements, contact the River Alliance of Wisconsin.

Benefits of a Fiscal Sponsor

- **Financial**, including receipt of tax-deductible donations, eligibility for certain grants, financial record-keeping, and payroll tax remittance and filings.
- **Insurance** coverage for general liability, for volunteers, and directors’ and officers’ insurance.
- **Human Resources Admin.** (if staffed), including payroll processing, benefits package and benefits administration.
- **Administrative**, including bulk rate postal permit.

Legal Status - Incorporation

There are two legal realities facing every organization, regardless of its purpose: first, that the organization itself can be sued for actions taken on its behalf, and second, that it will be considered a taxpayer by the state and federal government. There are various legal options available to minimize your organization's liability and to maximize your opportunities under both Wisconsin nonprofit corporation laws and federal tax-exemption statutes.

Becoming a Corporation – Under Wisconsin state laws, corporations may be created for both “profit” and “nonprofit” purposes. The main benefit for doing this is simple: incorporating protects those individuals managing the organization. All the debts and obligations are in the name of the corporation. Without this status, the individuals acting on behalf of the group can be held personally liable for the activities of the group. Another benefit of incorporating is that it ensures the organization continues to exist until the day it is dissolved, regardless of changes in leadership or in the involvement of individual members or directors. This facilitates business transactions with both contractors and funders. The process of incorporating can be time-consuming and carries with it certain responsibilities (e.g. filing annual reports with the state, adopting bylaws, etc.). As with any major decision regarding your organization, you should consider it carefully before proceeding.

Articles of Incorporation – In Wisconsin, an organization can incorporate by filing “articles of incorporation” with the Wisconsin Department of Financial Institutions under Chapter 181 (*Wisconsin Nonstock Corporation Law*). The required filing form is Form 102, Chapter 181, and the fee is \$35. All the information submitted to the state under these articles of incorporation can be amended by filling out Form 104, Chapter 181 (Articles of Amendment – Nonstock Corporation.)

Information Requirements for Filing Articles of Incorporation in Wisconsin

- Corporate name (a name may be reserved for up to 60 days)
- Period of existence
- Purpose for incorporating
- Principal address
- Address of principal office
- Name & address of registered agent
- Number of directors (minimum of 3)
- Will the corporation have members?
- Name & address of incorporator (minimum of 1)

A corporation is required to maintain a registered agent resident in Wisconsin, who is designated to receive all official communications on its behalf. It is also required to file an annual report to the Department of Financial Institutions.

While you are not required to use an attorney to file articles of incorporation, it is a good idea to have one who is familiar with nonprofit matters review them. This is especially true if you expect to file for tax exemption with the Internal Revenue Service (IRS) in the future. The language used to characterize your organization's purpose for incorporating is very important and can play a role in the IRS's decision to grant your group tax-exempt status.

Do not confuse your status as a "non-profit" corporation with that of federal tax-exemption (e.g. 501(c)3 or 501(c)4 status.) The two issues are completely separate – federal tax exemption must be pursued separately with the IRS. Many organizations are non-profit, but may not be tax-exempt.

Bylaws – Under Wisconsin law, an organizational meeting must be held following incorporation in order to adopt the group's bylaws. The purpose of these is to regulate and manage how the corporation is operated, consistent with the articles of incorporation. Bylaws provide a legal structure; help avoid conflict; establish procedures for solid financial management; describe the Board of Directors (e.g. their selection, numbers and length of terms); define Board committees, etc. Because of bylaws' importance in determining how an organization functions, it is critical that they be developed carefully and consider the nature of the organization itself. Contact the River Alliance of Wisconsin for sample copies of bylaws.

Decisions to Be Made in Drafting Bylaws

(From *Bylaws: Playing by the Rules*,
by Joan Hummel)

- Purpose
- Location
- Membership Structure (e.g. member selection, types of membership, power given to members, establishment of quorum, etc.)
- Board of Directors Structure (number of Board members, eligibility requirements, selection procedures, term limits, removal, replacement, compensation, etc.)
- Structure of Meetings (e.g. number of annual meetings, special meetings, notification requirements, quorum, rules on proxy votes, meeting rules, etc.)
- Role of Officers (e.g. define offices, process for elections, tenure, removal, replacement, officer powers and responsibilities, etc.)
- Role and Structure of Board Committees (e.g. standing committees, size, duties, rules for ad hoc committees, process for selecting committee members, etc.)
- Special Rules (e.g. indemnification, financial procedures, etc.)
- Dissolution of Corporation
- Amendment of Bylaws

Legal Status – Tax Exempt Status

The decision to pursue tax-exempt status with the IRS is very important – consider all your options carefully and determine which one best meets the needs of your organization.

Tax-exempt status granted by the IRS automatically exempts an organization from Wisconsin state income taxes, though the exemption does not extend to Wisconsin sales tax. (File Wisconsin Department of Revenue Form S-103 to receive a sales tax exemption).

Potential Benefits of Being Tax-Exempt

- Can solicit tax-deductible donations, including eligibility to receive grants from private foundations;
- *May* be eligible to purchase goods and services without paying sales tax;
- *May* qualify for reduced non-profit rates for bulk mail;
- *May* qualify to own property exempt from paying real property taxes.

Potential Disadvantages of Being Tax-Exempt

- Strict limits *may* be placed on lobbying activities;
- Contributions of time, money, or assistance to candidates for elected office or to political parties *may* be prohibited;
- Requires careful representation to donors of tax-deductible amounts in their contributions (e.g. particularly where some benefits are given for the contribution); and
- Requires substantial annual reporting requirements to the state and federal governments.

Types of Tax-Exempt Status – Most tax-exempt conservation organizations fit in the categories of 501(c)3 or 501(c)4. The differences between these two categories and the types of activities in which each of these group types may engage are detailed and complex. We encourage you to seek the advice of a nonprofit attorney in determining the tax-exempt status most helpful to your organization. Similarly, tracking your organization’s expenditures on the different activities that are limited by law requires very careful record keeping. Please seek the advice of an attorney if you have questions on activities that may put your tax-exempt status at risk.

501(c)3 – Generally speaking, the main difference between these is that contributions to 501(c)3 organizations are tax deductible for the donors, whereas contributions to 501(c)4 groups are not. This provides a clear fundraising advantage to 501(c)3 groups. Under certain circumstances, however, 501(c)3 groups may qualify for an alternate limit on their lobbying activities by choosing the “Lobbying Expenditures” Test (IRS Form 5768, section 501(h) of the tax code). Under this standard, a group may use up to 20% of its expenditures for lobbying activities. To apply for 501(c)3 status, fill out IRS Form 1023 with the help of an attorney. Filing fee is approximately \$500. **Note:** Small organizations grossing under \$5,000 annually are not required to file for 501(c)3 status with the IRS. Contributions to these groups remain tax deductible.

501(c)4 – These organizations enjoy a greater amount of flexibility in their lobbying activities. Mainly, they are allowed to lobby to advance their identified social welfare purpose, and may engage in activities that support or oppose a particular candidate for political office. To apply for 501(c)4 status, fill out IRS Form 1024. Filing fee is approximately \$500.

In Choosing 501(c)3 or 501(c)4 Status, Consider the Following:

(From: *(C)3 or (C)4? – Choosing A Tax-Exempt Status*, by Christine M. Cook for River Network)

- What does your group want to accomplish?
- What sorts of activities will you engage in?
- Which of these activities are either limited or prohibited for 501(c)3 groups? (e.g. direct or grassroots lobbying activities)
- What percentage of your group's expenditures will you spend each year on these limited activities?
- From what sources can your organization raise money? Will they require 501(c)3 status to be eligible?

Reporting Requirements - Tax-exempt organizations with annual gross receipts in excess of \$25,000 must file Form 990 or 990-EZ, the *Exempt Organization Annual Report Form* (in addition, 501(c)3 organizations must file Schedule A.) Filed tax returns are available to the public upon request. Alternatively, organizations that choose not to seek tax-exempt status must file a corporate federal tax return (Form 1120 or 1120-A).

Taxpayer Identification Number – This number is usually required to open a bank account for an organization. The Internal Revenue Service assigns taxpayer identification numbers (also called "employer identification" numbers) upon request. Use IRS Form SS-4.

Additional Resources

- *501(c)3 To Be or Not To Be*, The Grantmanship Center Magazine, Summer '96. To subscribe call (213) 482-9860 or visit www.tgci.com.
- *(c)3 or (c)4? Choosing a Tax-Exempt Status*, by Christine M. Cook for River Network. Call (800) 423-6747 or visit www.rivernetwork.org.
- *Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities*, by Gail Harmon et al. Available from the Alliance for Justice. To order, call (202) 822-6070 or visit www.afj.org/pubs.html.
- *Forms for becoming an incorporated organization* are available through the Wisconsin Department of Financial Institutions. Forms and instructions are available to file or amend articles of incorporation, to reserve a name for the corporation, and to change the name of the registered agent or office. To obtain forms, instructions or get fee information call (608) 261-9555 or visit www.wdfi.org/corporations/forms.
- *Free Management Library*, by Carter McNamara, is a web-based library with useful information on all aspects of starting and running a nonprofit organization. Visit www.mapnp.org/library.
- *Fiscal Sponsorship: Six Ways To Do It Right*, by Gregory L. Colvin. Available from the San Francisco Study Center; Ph: (415) 626-1650 or visit www.studycenter.org.
- *Internal Revenue Service Publication 557 (Tax Exempt Status for Your Organization), Package 1023 (Application for Recognition of Exemption), Form SS-4 (Employee Identification Number)*. To order, call (800) 829-3676 or visit <http://ftp.fedworld.gov/pub/irs-pdf/p557.pdf>, <http://ftp.fedworld.gov/pub/irs-pdf/k1023.pdf>, and <http://ftp.fedworld.gov/pub/irs-pdf/fss4.pdf>.
- *BoardSource* (formerly the National Center for Nonprofit Boards), visit www.boardsource.org/main.htm.
- *The Non-Profit Handbook, 2nd edition*, by Gary M. Grobman for the Pennsylvania Association of Nonprofit Organizations. Call White Hat Communications at (717) 238-3787 or visit <http://whitehat.safeshopper.com>.
- *Nonprofit Charitable Organizations*, with Stan Hutton, a web-based resource center, includes information, sample documents and FAQs on starting a nonprofit organization. Visit <http://nonprofit.about.com/careers/nonprofit/cs/helpwithgrants/index.htm>.
- Contact the *River Alliance of Wisconsin* for sample bylaws and articles of incorporation. Call (608) 257-2424 or visit www.wisconsinrivers.org.
- *Starting and Running a Nonprofit Organization*, by Joan M. Hummel. Call the University of Minnesota Press at (612) 627-1970 or visit www.upress.umn.edu.
- *Starting Up – A Handbook for New River and Watershed Organizations*, by River Network. To order, call (800) 423-6747 or visit www.rivernetwork.org.
- *Wisconsin Dept. of Revenue* grants state -tax exempt status. For information, call (608) 266-2772 or contact your local office. For information on *Sales Tax Exemption for Nonprofit Organizations*, visit www.dor.state.wi.us/pubs/00pb206.pdf.