

Post Protection/Security

It is important, for the protection of your Post, that each of the following are filled:

Incorporation Papers - Department Constitution Article X, Section 19 states, All Posts shall be incorporated under the laws of the State of Florida. Articles of Incorporation must be filed with the State of Florida, copy to Department. An Annual Report must be filed yearly to maintain “active” status. The report must be filed electronically online between January 1st and May 1st. The fee for the annual report is \$61.25. “Annual Report Reminder Notices” are sent to the email address you provide the State of Florida when filing for Articles of Incorporation or filing an Annual Report. To file any time after January 1st, go to www.sunbiz.com.

Supplemental Charter - When a post becomes incorporated, it is necessary to apply for a supplemental charter. When a Post incorporates and changes its name, the change is usually enough for it to be considered by the government as a new entity, thereby requiring another Employer Identification Number (EIN). The old one is normally invalid; play it safe, get a new one. This number is obtained through the IRS by submitting an SS-4 Form.

The incorporation of a Post modifies the information sent in on the earliest inclusion letter reporting your EIN with national organization. The legal name of the Post will appear on the incorporation papers or corporate charter with the state. A change in the name, even just adding “INC” to the name, will be reported to the IRS in September.

National needs to maintain your correct, legal and accurate Post name on this report for IRS exactly as it appears on the corporate charter from the state. Any changes are to be sent to the national office so the IRS records will remain up-to-date and the Post can avoid some IRS issues.

When requesting a supplemental charter, please fill the form out in triplicate. A copy of your **Articles of Incorporation**, issued by the state, is required attachment to the supplemental charter application, which is available from Department.

If the name of the Legion charter changes while a supplemental charter is in place, the supplemental charter will be null and void. A new supplemental charter application and **Articles of Incorporation** will need to be submitted to reflect the new name of the Legion charter. For further information contact Irene Graham at 407-295-2631 ext. 231 or by email at igraham@floridalegion.org.

Employer Identification Number (EIN) and Tax Exempt Status - Federal Tax Regulations require every subordinate American Legion Post that is obligated to file an Annual Information Return (Form 990), or if they maintain a bank account, must have an Employer Identification Number (EIN). The American Legion is tax exempt under Section 501©(19) of the Internal Revenue Code of 1954 as amended.

Every Post needs to obtain an EIN from the government. All newly chartered Posts receive an SS-4 form in their new Post kit, prepared and sent by national. The instructions should be closely followed in completing and submitting the SS-4 form.

When you receive the Post EIN, send a copy of the number and the **Inclusion Letter** (also in the packet) to national headquarters so the post may be listed as a tax-exempt charter of The American Legion. A listing of all new posts, plus updates, is sent to the IRS each September 30th. Your bank and various vendors will also need this number – protect it.

Consumer's Certificate of Exemption for Sales and Use Tax - Application for Consumer's Certificate of Exemption form (DR-5) must be filed with Florida Department of Revenue to receive tax exempt purchases and leases, when used in carrying on Post activities. Tax Exempt application must be filed with Florida Department of Revenue, copy to Department.

Annual 990 Filing Requirement

Posts with gross receipts normally less than or equal to \$50,000 can now use the **Form 990-N**. Posts with gross receipts less greater than \$50,000 and less than \$200,000 and total assets less than \$500,000 can use **Form 990-EZ** or **Form 990**.

If gross receipts are greater than or equal to \$200,000 or total assets are greater than or equal to \$500,000, the Post must use the **Form 990**.

- **Filing Dates:** Forms 990, 990-EZ and 990-N must be filed by the 15th day of the fifth month after the end of the Post's annual accounting period. For example, if a Posts tax period ends on December 31, the form is due May 15 of the following year. The due date for Form 990 and 990-EZ may be extended automatically for three months by filing Form 8868, *Application for Extension of Time To File an Exempt Organization Return, before the due date*. An additional three-month extension may be requested on Form 8868 if the Post shows reasonable cause why the return cannot be filed by the extended due date.
- **Filing Penalties and Revocation of Tax-Exempt Status:** If Form 990 or Form 990-EZ is not filed by its due date, the IRS may assess penalties of \$20 per day until it is filed. The penalty for failure to file a return or a complete return may not exceed the lesser of \$10,000 or 5 percent of the Posts gross receipts. For a Post whose gross receipts of over \$1 million for the year, the penalty is \$100 a day up to a maximum of \$50,000. The IRS may impose penalties on Post Officers who do not comply with a written demand that the information be filed. There is no penalty for filing Form 990-N late. A Post that fails to file the required informational return (Form 990, Form 990-EZ, or Form 990-N) for three consecutive years results in revocation of tax-exempt status as of the filing due date for the third return.
- **Reinstatement Procedures:** For the Post to have its tax-exempt status reinstated, it must apply (or reapply) for tax-exempt status using IRS **Form 1024** and pay a user fee.

Change of Address or Responsible Party IRS FORM 8822-B - IRS Form 8822-B must be completed when a change in identity of the Post “Responsible Party” or change of address occurs. The “Responsible Party” could be the Post Commander, or Adjutant, or Finance Officer, or whoever has level of control over the funds. After elections or a change of Officers, Form 8822-B must be filed within 60 days of the change.

Post Constitution and By-Laws - All Post must have Constitution and Bylaws per Department Constitution, Article 19, Section 11. Each Post in the Department of Florida shall have its own Constitution and By-Laws, provided that it shall not conflict with the Constitution and By-Laws of the American Legion and The Department of Florida.

It is strongly recommended that Post Constitution and By-Laws be updated every three (3) years; send 2 original copies of the entire Constitution and By-Laws with any amendments highlighted to Department Headquarters. Amendments must have the Post Commander and Post Adjutant’s signature and date approved by the membership. Amendments must be sent with a cover letter from the Post Commander or Post Adjutant stating the changed Article(s)/Section(s). Department Headquarters will keep one copy and will send the second copy to the Department Judge Advocate for approval. *Please see Post Constitution and By-Laws Submission Procedures.*

Restriction of Post Property Form - Posts are required to notify Department and complete a Restriction of Post Property Form once a Post purchases or acquires property. No Post can sell or dispose of any real property without following Article X, Section 20 of the Constitution of the Department mandates that “No Post of the Department of Florida shall sell or otherwise dispose of any real property (real estate) without first obtaining the written consent of the Department Commander acknowledging receipt of written notice to The American Legion, Department of Florida NOT LESS than thirty (30) days prior to such sale or disposal, that all members of that Post have been given written notice, sent via Certified Return Receipt or other verifiable correspondence, of the proposed sale or other disposition. Written notice must include the place, date and time of meeting where the proposed sale of Post property will be discussed and voted upon. If a Post is financially unable to contact each member through verifiable correspondence, the Department will assist in contacting the Post members. Each Post Shall provide The American Legion, Department of Florida with the minutes from the meeting in which the Post membership voted to sell the property and written acknowledgment of the forgoing, duly executed by the Post Commander and Adjutant, and in a form suitable to the Department. The Department Adjutant shall cause this written acknowledgment to be recorded through the County Recorder’s Office in the country wherein the Post is located.”

To find out if your Post already has a Restriction of Post Property form on file, contact the Executive Assistant, Rachel Castleberry, at 407-295-2631, ext. 239 or by email at rcastleberry@floridalegion.org.