

FINANCIAL REGULATIONS THAT SHOULD CONCERN A POST OR SUBSIDIARY ORGANIZATION

By John Dollinger, Department of Florida Finance Committee Chair - January 2020

A post faces regulation from several organizations during its existence. There are some more important than others; The American Legion, Department of Florida – Charter, The IRS – your Employee Identification Number (EIN), sometimes called a Tax Identification Number (TIN), and the Florida State Government, Department of Revenue who issues your Certificate of Exemption or Department of State which makes your corporation legal in the State thru registration of your Post Corporation.

I believe each member understands what the Post Charter is and that it is posted somewhere a member can see it, in your Post. That Charter is governed by the Constitution and By-Laws of The American Legion national organization. That Charter is supervised by the Department of Florida under its Constitution and By-Laws.

The Internal Revenue Service (IRS) issues **any** legal entity, be it a partnership, trust, corporation whatever, they get an EIN. The different thing about an American Legion Post is that we are “Federally Chartered”. The American Legion national organization has a blanket EIN number under which all the individual Post EINs must be listed annually. The national EIN is for a nonprofit, as must each Post be a nonprofit.

As a nonprofit we are tax-exempt as a 501(c)(19) war veterans’ organization which is defined as

- A post or organization of past or present members of the US Armed Forces
- An auxiliary unit or society of such post or organization
- Or a trust or foundation for such post or organization

Most individuals and corporations understand that a donation to a 501(c)(3) is tax deductible. Donations to war veterans’ organizations 501(c)(19) are equally deductible as charitable contributions on the donor’s federal income tax return. There is confusion about this, but IRS Code section 501(c) is clear.

Having all this background, lets look at the reality of what can happen!

An organization like your Post has a nonprofit Employee Identification Number (EIN). Each year your Post is REQUIRED to file an IRS 990 which is a nonprofit tax return. The 990 comes in a couple of different ways, a 990N for Posts with less than \$50,000. in revenue, up to a full 990 which Posts with significant revenue must file. I would suggest that every Post consult a CPA for answers on what and how to file. Your Post must file every year by the 15th day of the 5th month after the end of your financial year.

What happens, if you for any reason, a Post does not to file a 990 tax return. I am Post XXX and I don’t file my 2016 tax return. After 3 years of not receiving that tax return the IRS will revoke Post XXX EIN and therefore your Post nonprofit status. The IRS sends the Post a letter saying it is revoked which most Posts don’t understand and therefore

ignore. Even if your Post filed 2017 and 2018, your nonprofit status will still be revoked. Your EIN will go on a list titled "Automatic Revocations of Exemption List".

What affect does being on the "Automatic Revocations of Exemption List" create for your Post?

- **Your nonprofit is no longer a 501(c) tax-exempt organization.**
- **Donations to your Post are no longer tax-deductible to the donor**
- **Your Post is now considered a for-profit company and liable for federal corporate taxes and must file a *Form 1120 US Corporate Tax Return*.**
- **You may now have serious expensive consequences in your state and will be liable for Florida State Sales Tax on all business transactions such as beverage and food sales as well as catering and hall rentals since 2016.**

The ramifications for those Posts who are revoked are significant but probably the most significant is your Post is no longer an American Legion Post, in good standing, because it lost the nonprofit status. This could affect your Post significantly consult Department. Since the Post is no longer tax-exempt, donations to the Sons of the American Legion and American Legion Riders are no longer tax deductible either.

How does a Post fix this? To have your Post tax-exempt status reinstated you must file an application, on this form you may also ask for retroactive reinstatement, but it may require filing past tax returns. I strongly recommend the Post seek the advice of a tax professional before proceeding.

Want to find out if your Post EIN is revoked, go to the Automatic Revocation of Exemption List and put in your Post EIN and you will get the answer.

On the State of Florida level, you have 2 things to be concerned about. The first is making sure your corporation is valid in the State. Every Post must, upon incorporation, file for registration with the State of Florida, Department of State as a Not for Profit. It will include your EIN on the form. At this time the State does not check your EIN to see if is revoked. Once your registered with the State of Florida, each year you must file an annual report. To avoid late fees get them done between January 1 and May 1 and if they are not done by the 4th Friday in September your Post Corporation will be automatically "Administratively Dissolved". The Post will receive notice but, in many cases, it is sent to the Register Agent who may or may not understand and ignores it. Dissolution will create further issues for the Post.

- **Under Florida Statute "a corporation administratively dissolved continues its corporate existence but may not conduct any affairs except that necessary to wind up and liquidate its affairs under s. 617.1405 and adopt a plan to distribute all assets pursuant to s. 617.1406."**

- **Further under Florida Statute “A director, officer, or agent of a corporation dissolved pursuant to this section, purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and the liabilities of the corporation arising from such action and incurred subsequent to the corporation’s administrative dissolution only if he or she has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the corporation’s Board of Directors or members subsequent to the reinstatement of the corporation.”**

This becomes another issue for a Post trying to maintain a Charter in good standing.

Want to find out if your Post Corporation is active or dissolved with the State. Go to sunbiz.org and put in your Posts legal name and you will get the answer.

Let’s discuss another issue you face with the State of Florida, **Consumer’s Certificate of Exemption** which you receive from the Department of Revenue. This is the form that allows the Post to purchase goods and services free of tax. It must be renewed every 5 years. During that review the department **MAY** require that the Post submit documentation of its structure, federal tax status, what they do as an American Legion Post, and anything else as mandated in Florida Statute Title XIV Chapter 212 Section 084. Having your Post on the “Automatic Revocations of Exemption List” may create issues renewing your certificate. Not having a valid Consumer’s Certificate of Exemption effects all organizations including Sons of The American Legion and American Legion Riders.

There is one other area frequently overlooked by many Posts, Sons and Legion Riders, which can create issues. **Unrelated Business Income** is both an Internal Revenue Code issue and a Florida Department of Revenue problem. Unrelated Business Income as defined by the IRS is any revenue generated by a 501(c) organization that is not related to the tax-exempt purpose of that organization. In Florida since they have eliminated the sales tax on veterans’ organizations, they have made sales to the public and non-member guests taxable. This effects bar sales, food sales and anything else that may generate revenue from the public in your Post. Many Posts ignore UBI until those with bars go to get a 3-day special ABT permit and get it turned down by the Department of Revenue. More recently liquor license renewals have had issues with UBI where the Department of Revenue gets involved with ABT. Unrelated Business Income can occur with the Sons and Riders.

One last area of concern in a Post operation is the **withholding of taxes from any cash winning above \$600.00**. The IRS requires that income taxes be withheld from all winnings above \$600.00 and that the sponsoring organization is responsible to withhold

the taxes. I have seen a nonprofit give out over a \$100,000.00 prize on a game like Queen of Hearts and not withheld taxes. When the income taxes were not paid the IRS came to the nonprofit demanding the taxes and when they couldn't pay, a tax lien is placed on the tax-exempt property.

This document is issued as a guideline for Posts to use in their compliance testing.