

TAX ISSUES AND REGULATIONS AFFECTING LIONS CLUBS AND LEADERSHIP

DISCLAIMER: Please note that the content contained in this material is for informational purposes only and is not intended to be deemed legal or tax advice. **TAX ADVICE NOTICE:** Tax advice, if any, contained in this material does not constitute a "reliance opinion" as defined in IRS Circular 230 and may not be used to establish reasonable reliance on the opinion of counsel for the purpose of avoiding the penalty imposed by Section 6662A of the Internal Revenue Code.

INTRODUCTION TO TAX EXEMPTION

Exemption for LCI and Charter Clubs

Lions Clubs International (LCI) is exempt from federal income taxation under § 501(c)4 of the Internal Revenue Code (IRC). When a Lions club receives its charter from LCI, it is granted 501(c)4 tax-exempt status under LCI Group Exemption Number 0239. When granting the Group Exemption to LCI, the IRS noted that the Association is "the parent organization of clubs operating in 150 countries and geographical locations around the world. All such clubs have as their primary functions the performance of activities which must serve to alleviate in some way a need in their respective communities, which is financed through funds raised from members of the public." (IRS Ruling Letter, June 11, 1981). This seminar will discuss what it means to be a 501(c)4 organization, the difference between a 501(c)4 and an organization exempt under 501(c)3, and the tax filing requirements for clubs. In addition, we will cover incorporating your club and creating a foundation.

What does 501(c)4 mean?

IRS § 501(c)4 provides the tax exemption for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare." Therefore, the organizations are exempt from paying federal income tax. However, LCI and its chartered clubs are not "charitable organizations," as defined in IRC § 501(c)3, and donations made to LCI and local clubs are not tax-deductible under IRC § 170.

Disclosure requirements for deductions.

Contributions to 501(c)4 organizations are NOT deductible as charitable contributions for federal income tax purposes. In certain circumstances, tax-exempt organizations that are not eligible to receive tax-deductible contributions (501(c)4 organizations) must disclose, in any fundraising solicitation, in an express statement (in a conspicuous and easily recognizable format), that contributions to the organization are not deductible for federal income tax purposes. Please note that this disclosure requirement applies to a fundraising solicitation: if the organization soliciting the funds normally has a gross receipts over \$100,000 per year, the solicitation is part of a coordinated fundraising campaign that is soliciting more than 10 persons during the year, and the solicitation is made in written or printed form, by television or radio, or by telephone.

TAX FILING – CLUB RESPONSIBILITIES

Obtaining an EIN. Every Club and/or District must have an employer identification number (EIN), even if it will not have employees. The EIN is a unique number that identifies the organization to the Internal Revenue Service. To apply for an EIN, you should obtain a Form

SS-4 and its Instructions from the IRS. You may also apply for an EIN online (www.irs.gov/charities), by telephone (1-800-829-4933), or by fax (fax number at the location accepting applications from your state). It is important that the Clubs and Districts are using the correct EIN for their annual filing. Failure to use the correct EIN will result in revocation of the 501(c)4 exemption. Should your Club or District have the wrong EIN, you may correct the records with the IRS through their Exempt Organizations (EO) customer service at 877-829-5500.

Filing Requirements. Under the Pension Protection Act of 2006, most small tax-exempt organizations whose gross receipts are normally \$25,000 or less (\$50,000 or less for tax years 2010 and later) must file Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ*. Before this law was enacted, these small organizations were not required to file annually with the IRS. This means that ALL clubs and districts must annually file a 990-N, 990-EZ or 990.

E-Postcard Filing. If your club is eligible to file a 990-N, then it must provide the following information on the 990-N: the club's legal name; any other names the club uses; the club's mailing address; the club's website address (if applicable); the club's taxpayer identification number (TIN or EIN); name and address of principal officer of the organization (President); the fiscal year the club runs by which should be June through July; a statement that the club's annual gross receipts are normally \$25,000 or less (\$50,000 or less beginning with the 2010 tax year); and if applicable a statement that the club has been canceled or is planning on canceling.

When to file: Forms 990, 990-EZ and 990-N must be filed by the 15th day of the 5th month after the end of the organization's annual accounting period. For example, if the club's tax period ends on December 31, 2011, the form is due May 2012. Please note that ***an organization cannot request an extension for filing the Form 990-N.***

Revocation: If a Lions Club or District fails to file timely a Form 990, 990-EZ or 990-N, then their exemption will be revoked by the IRS. This is regardless of whether they are part of a group exemption like Lions Clubs or Districts. The IRS issued instructions for organizations wishing to get reinstated. As part of this, the IRS issued guidance on how organizations can apply for reinstatement of their tax-exempt status, including retroactive reinstatement. In addition, the IRS announced transition relief for certain small tax-exempt organizations – those with annual gross receipts of \$50,000 or less for 2010 – that were made subject to the new "postcard" filing under the Pension Protection Act. The relief allows eligible small organizations to regain their tax-exempt status retroactive to the date of revocation and pay a reduced application fee of \$100 rather than the typical \$400 or \$850 fee. Full details are available in Notice 2011-43, Notice 2011-44 and Revenue Procedure 2011-36, issued by the IRS. If an organization appears on the list of organizations whose tax-exempt status has been automatically revoked, it is because IRS records indicate the organization had a filing requirement and did not file the required returns or notices for three consecutive years. Any organization that wishes to receive retroactive reinstatement under the new rules has to file an application for recognition of exemption. Therefore, either a Form 1023 or 1024 has to be filed EVEN IF they didn't have to file one initially, such as an organization covered initially under a group exemption like Lions. There are two processes from there, depending upon what filing was missed resulting in

the revocation. If the organization/club had less than \$25k in income and was only required to file the 990N, reinstatement is fairly straightforward. The organization only has to explain that it wasn't required to file a 990 or 990EZ and then must file the IRS Form 1023 or 1024, depending upon the classification, and pay a \$100 filing fee. However, for organizations that had to file a 990EZ or 990, it will be more difficult because they have to establish reasonable cause for failure to file. For these organizations we recommend that they work with local counsel or tax professionals to assist them in getting reinstated with the IRS.

INCORPORATION

Many clubs may wish to incorporate their club in their local state or jurisdiction. This is something that will benefit the club and is encouraged by Lions Clubs International.

Benefits to incorporating. There are several benefits to incorporating your club or district. Following are a few:

- i. In most jurisdictions, individual club members are not liable, individually or severally, in lawsuits against the club. Liability is limited to the capital or assets of the club.
- ii. Some states may not allow an unincorporated association of volunteers to hold title to property. Property ownership would require a "trustee" arrangement where some other party holds title for the club. Even where unincorporated associations may hold title, the legal setup does not serve the members' interest as well as incorporation.
- iii. Legal documents, such as contracts are more easily handled under a corporate structure.
- iv. Tenure of a corporation is perpetual in nature.

Annual Filing Requirements. Annual filing requirements that vary state to state. If a club determines that it is in its best interest to incorporate, it should be aware that there are various filing requirements that they must fulfill in the state or local jurisdiction in which they operate. Therefore, it is important for the club to research the requirements before they decide to incorporate or secure the services of a provider like CSC to assist them.

Authorization to Incorporate. Before a club is incorporated, they must submit their proposed Articles of Incorporation to Lions Clubs International Legal Division for approval. The following conditions must be met before incorporating.

- i. The Articles of Incorporation must contain a jurisdictional statements that states that the club is subject to International Constitution & By-Laws;
- ii. The Purposes enumerated must remain the same as those in the International Constitution and By-Laws; and
- iii. The Name of club should be the same as our records.

Lions Clubs International is required to maintain complete records of all Lions clubs that become incorporated. At the start of each year, it is necessary for LCI to file with the IRS a list of clubs that become incorporated during the preceding year. Therefore, if your club incorporates, please notify the Legal Division immediately.

FOUNDATIONS

A Lions Foundation formed in accordance with IRC 501(c)(3) would be eligible to obtain a 1023 exemption number from the IRS which would qualify a contributor's donation as tax deductible to the extent allowed by law. Other benefits available to a 501(c)(3) organization include exemption from property and sales taxes in most states.

To form a Lions Foundation, the by-laws and policies of Lions Clubs International provide that the applying Club or District must request authorization from Lions Clubs International. Also, the applying Lions Foundation must satisfy criteria established by the International Board of Directors. Through the member benefit program established with CSC, a Lions Club or District can engage the services of CSC in forming a Lions 501(c)(3) Foundation that satisfied the criteria established by the International Board of Directors. If your club or district decides to take advantage of this membership benefit program with CSC and establish such a foundation, please submit the following documents directly to CSC and CSC will coordinate the review and authorization by the Lions Clubs International Legal Division and handle all necessary filing.

1. A completed application for use of the Lions name and/or emblem.
2. A copy of the minutes or resolution of the club and/or district indicating the support of the Lions Club or District in the formation of the Lions Foundation.
3. A copy of the proposed Articles of Incorporation and Constitution and By-laws for the Lions Foundation.

Of course, a Club or District always has the option of handling all necessary filing to establish a Lions Foundation on its own. In that case, the club or district may submit the required documents directly to the LCI Legal Division for review and authorization.

IRS Assistance:

IRS Exempt Organization Web site – www.irs.gov/eo

Web based training – www.stayexempt.org

EO Customer Service – (877) 829-5500

Incorporation/Foundation Assistance:

Corporation Service Company

2711 Centerville Road

Wilmington, DE 19808

Phone: 800-217-3225

Fax: 302-636-5454

Email: lionsclubs@cscglobal.com