



Book 11

Taxes

Overview

AFE is set up on a hierarchy – not for authoritative reasons but for efficiency and tax reasons. Why are chapters separate? It would be a herculean task for the small national staff to meet the needs of over 200 chapters worldwide. As pointed out in **Book 7 “FINANCE”**, because AFE did not secure a Uniform Group Tax Exemption in its incorporation process years ago, chapters must currently secure their own federal I.D. number (EIN) and federal (state also if applicable) tax-exempt status. This is actually a good thing because otherwise the national office would have the responsibility of filing annual taxes for all chapters which would be more than a herculean task...an almost impossible one!

Here is an excerpt from a 2009 audit of AFE by a Certified Public Accountant firm: “While the local chapters of the Association for Facilities Engineering are separate legal entities from the national office and outside the scope of our audit procedures, we noticed that some chapters have not fulfilled the required IRS reporting obligations for tax exempt organizations. Lack of action in this area may jeopardize the tax exempt status of non-compliant chapters of the Association for Facilities Engineering”.

Chapters are autonomous so that they may manage their own business and finances, including filing all necessary documentation. The AFE Headquarters staff supports each chapter with resources and information. Region VPs, with their group directors, are the go-between level and liaisons between the chapters and the AFE Headquarters.

This book will take the information from the IRS Tax Code for a 501c(6) Tax exempt Business League (Trade Association)¹ and present in simple terms the life cycle of this type organization; i.e. everything you need to know from creating an organization to maintaining the tax exemption.

Why is this information important to your chapter? It’s very simple...if you are not tax exempt or lose your exemption; your chapter is liable for taxes on any funds received. Also, because your chapter is not tax exempt, AFE Headquarters will not send your portion of the members’ dues because it, being a tax exempt organization itself, cannot “contribute” to a non-tax exempt organization. These are “simple GM” tasks...GET and MAINTAIN your chapter’s tax exemption!!

Life Cycle of a Tax Exempt Business League (Trade Association)

Starting Out

- A. Creating the Organization** - The first stage in the life cycle of any organization is its creation. A nonprofit organization may be created as a corporation, a trust, or an unincorporated association. Any of these entities may qualify for exemption. Note, however, that a partnership generally may not qualify.
 - a. Typically, an AFE chapter is organized as a not-for-profit corporation. This incorporation is done at the state level through the Department of State for that state². Each state is different (usually in a small way) so giving step-by-step instruction here would not be feasible. There are many online companies in

existence that will handle all the documentation, filing and notifications for your chapter, even to obtaining the Employer Identification Number (EIN). Some of these companies include LegalZoom³, IncFile⁴, rocketlawyer⁵ and DirectIncorporation⁶

- b. Some tips before filing:
 - i. Have a name for your chapter
 - ii. Write a mission statement
 - iii. Write by-laws (not required per federal tax laws but some states may require)
 - iv. Have officers chosen/elected
- c. **Employer Identification Number (EIN)** - Every organization must have an employer identification number, even if it will not have employees. The employer identification number is a unique number that identifies the organization to the Internal Revenue Service. Please note that the employer identification number is not your tax-exempt number. That term generally refers to a number assigned by a state agency that identifies organizations as exempt from state sales and use taxes. You should contact your state revenue department for additional information about *tax-exempt numbers*. To apply for an employer identification number, you should obtain Form SS-4 and its Instructions⁷. You may also apply for an employer identification number on-line⁸, by telephone, or by fax. Make sure that you select *church or church-controlled organization or other nonprofit organization* as the **type of entity**. Securing an EIN via the online link generally takes only a few minutes. Don't forget, you need this number BEFORE applying for tax exemption.

Applying to the IRS for tax exemption

- A. Nonprofit status is a state law concept. Nonprofit status may make an organization eligible for certain benefits, such as state sales, property and income tax exemptions. Although most federal tax-exempt organizations are nonprofit organizations, organizing as a nonprofit organization at the state level does not automatically grant the organization exemption from federal income tax. To qualify as exempt from federal income tax, an organization must meet requirements set forth in the Internal Revenue Code.
- B. What are the requirements of a 501c(6) Trade Association¹:
 - a. An association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit
 - b. An organization's activities must be devoted to improving business conditions of one or more lines of business (as distinguished from performing particular services for individual persons). It must be shown that the conditions of a particular trade or the interests of the community will be advanced. Merely indicating the name of the organization or the object of the local statute under which it is created is not enough to demonstrate the required general purpose.

- c. No part of a trade association's net earnings may inure to the benefit of any private shareholder or individual and it may not be organized for profit to engage in an activity ordinarily carried on for profit.
 - d. To be exempt, a section 501(c)(6) organization must receive meaningful membership support.
- C. Apply for tax-exempt status by filing IRS Form 1024, "Application for Recognition of Exemption Under Section 501(a)," which also applies to 501(c)(6). Include a completed copy of IRS Form 8718, the "Exempt Organization Determination Letter Request." Have someone with the power of attorney sign the application, include proof of your EIN, submit the forms and pay the associated fees.
- D. Each application for exemption must be accompanied by an exact copy of the organization's organizing document: Articles of incorporation for a corporation. If the organization does not have an organizing document, it will not qualify for exempt status.
- E. You will NOT receive a federal tax-exempt number as they do not issue. Your state may issue one.
- F. If a corporation is reinstated by the state after an administrative suspension or dissolution of its corporate charter, its exempt status may be reinstated without the need for the corporation to reapply. The organization must submit evidence from the state that its charter has been reinstated, indicating the effective date of reinstatement. In addition, the organization should provide evidence that it has complied with any filing requirement for annual returns during the period during which its corporate status was administratively suspended or dissolved.
- G. If, however, an organization's exempt status has been automatically revoked for failing to file annual returns, exempt status cannot be reinstated unless it submits a new exemption application, even if the state reinstates its corporate status.
- H. What is "automatically revoked"? An organization that fails to file the required *e-Postcard* (or annual return) for three consecutive tax years automatically loses its tax-exempt status. The revocation of an organization's tax-exempt status does not take place until the filing due date of the third year. For example, if your *e-Postcard* was due on May 15, 2008 (for tax year 2007) and you did not timely file in 2007, 2008 or 2009, you lose your tax-exempt status effective on the 2010 due date.

Required Filings

- A. Every organization exempt from federal income tax under Internal Revenue Code section 501(a) must file an annual information return⁹ ***unless your chapter*** normally has annual gross receipts of \$50,000 or less (\$25,000 for tax years ending before December 31, 2010) and therefore is eligible to file an annual electronic notice Form 990-N (the ePostcard⁹)
- B. All 990 forms, including the 990-N, are to be filed by the 15th of the 5th month after the end of your chapter's tax year. For instance, if your tax year ends on July 31, then the form must be filed by December 15 of that same year. Another example (and more typical) is if

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your tax year ends on December 31, then the form must be filed by May 15th of the next year. This is an annual requirement!

- C. Even though this is an annual requirement, there is an exception for the ePostcard, Form 990-N. If you do not file your *e-Postcard* on time, the IRS will send you a reminder notice. There is no penalty assessment for late filing the *e-Postcard*, but an organization that fails to file required *e-Postcards* (or information returns – Forms 990 or 990-EZ) for three consecutive years will automatically lose its tax-exempt status. The revocation of the organization’s tax-exempt status will not take place until the filing due date of the third year – **THIS IS VERY IMPORTANT!** Chapters must file their tax-exempt documents and EIN with AFE Headquarters so it can demonstrate to the IRS that we give dues rebates to tax-exempt entities (chapters). Some chapters, who have not filed their 990 form in three years, file these documents with AFE Headquarters thinking they are compliant and may not be. Chapters must assure they still have their tax exempt status with the IRS!
- D. Completing the e-Postcard requires the eight items listed below:
- a. Employer identification number (EIN), also known as a Taxpayer Identification Number (TIN).
 - b. Tax year
 - c. Legal name and mailing address
 - d. Any other names the organization uses
 - e. Name and address of a principal officer
 - f. Web site address if the organization has one
 - g. Confirmation that the organization’s annual gross receipts are \$50,000 or less
 - h. If applicable, a statement that the organization has terminated or is terminating (going out of business)

Keeping the Tax Exemption

- A. Adhering to the requirements in “Applying to the IRS” paragraph B above
- B. Assuring your 990 form is filed timely
- C. Lobbying is germane to accomplishing chapter’s exempt purposes but may have to notify members that their dues are being used for this purpose
- D. Reporting any significant changes to the IRS; e.g. change in mission, name, address

SUMMARY

1. Prepare for incorporation with the state:
 - a. Name your Chapter
 - b. Write mission statement
 - c. Elect officers
 - d. Write Chapter By-Laws
2. File for Articles of Incorporation from your state (Department of State)
3. Apply for EIN (easiest is online)

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4. Apply for Federal Tax Exemption (no number will be issued) – Forms 1024 and 8718 plus a fee
5. Apply for your state tax exemption (may or may not be issued a number)
6. Send copy of Articles of Incorporation and EIN to AFE Headquarters
7. Annually file (NLT 15th of 5th month after end of tax year) the proper 990 form (990, 990-EZ or 990-N) Use 990-N, online ePostcard, if chapter's gross receipts for that year are <\$50,000
8. If your chapter has not filed the 990 form in the past three years, your tax exemption status has been revoked and you will have to reapply.

References:

¹**For this book:** <http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Life-Cycle-of-a-Business-League-%28Trade-Association%29>

²**State Non Profit Incorporation Websites:** http://www.irs.gov/pub/irs-tege/state_incorporation_sites_np.pdf

³**Legal Zoom:** <http://www.legalzoom.com>

⁴**IncFile:** <http://www.incfile.com>

⁵**RocketLawyer:** <http://www.rocketlawyer.com>

⁶**DirectIncorporation:** <http://www.directincorporation.com>

⁷**SS-4 Form & Instructions:** <http://www.irs.gov/pub/irs-pdf/fss4.pdf>

⁸**Apply for EIN online:** <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Apply-for-an-Employer-Identification-Number-%28EIN%29-Online>

⁹ **Annual Exempt Organization Returns, Notices and Schedules:**
<http://www.irs.gov/Charities-&-Non-Profits/Annual-Exempt-Organization>Returns,-Notices-and-Schedules>