

TAX GUIDE

# Veterans'

*Organizations*



## PREFACE

THIS TAX GUIDE FOR VETERANS' ORGANIZATIONS IS INTENDED TO HELP VETERANS' ORGANIZATIONS THAT ARE RECOGNIZED AS TAX EXEMPT UNDER SECTION 501(C) OF THE INTERNAL REVENUE CODE (IRC) OR THAT ARE CONSIDERING APPLYING FOR RECOGNITION OF TAX EXEMPTION. THE PUBLICATION IS INTENDED TO ASSIST IN HELPING VETERANS' ORGANIZATIONS UNDERSTAND AND MEET THEIR TAX RESPONSIBILITIES.

IF YOU HAVE QUESTIONS ABOUT ISSUES RAISED IN THIS PUBLICATION OR ABOUT TAX EXEMPTION IN GENERAL, PLEASE CONTACT US AT OUR TOLL-FREE CUSTOMER SERVICE NUMBER - 877-829-5500.

TO ASSIST US IN OUR GOAL OF PROVIDING EFFECTIVE, QUALITY AND CURRENT INFORMATION, WE WOULD APPRECIATE YOUR INPUT, COMMENTS AND SUGGESTIONS ON THIS PUBLICATION. YOUR WRITTEN COMMENTS MAY BE SENT TO:

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EXEMPT ORGANIZATIONS DIVISION  
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WASHINGTON, DC 20224

# Veterans'

## *Organizations*

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## INTRODUCTION

Veterans' organizations occupy a special place in the world of exempt organizations. Not only are most veterans' organizations exempt from tax, contributions to them may be deductible, and some are permitted to set aside amounts that are used to provide insurance benefits for members. This combination - tax-exempt status, deductibility of contributions and the ability to pay benefits to members - is relatively rare and is evidence of Congress's intent to provide special tax treatment for veterans' organizations. When coupled with the ability to engage in both lobbying activities

and political activities, it is fair to say that veterans' organizations are unique in the tax-exempt sector.

Many questions arise in connection with the tax status of veterans' organizations. This publication provides general information relating to the federal tax rules and Internal Revenue Service (IRS) procedures to help veterans' organizations understand their responsibilities within the federal tax system.

This publication contains no new rules or regulations. It is simply a convenient "one-stop" collection of existing provisions of tax law that may relate to, or affect, veterans' organizations.

## BACKGROUND

Before the enactment of IRC 501(c)(19) on August 29, 1972 (Public Law 92-418, 86 Stat. 656, reproduced in 1972-2 C.B. 675), war veterans' organizations were grouped together with all other veterans' organizations and recognized as exempt under IRC 501(c)(4) as social welfare organizations. Their subsidiaries, which were formed to maintain and operate their social facilities, were often recognized as exempt social clubs under IRC 501(c)(7). In addition to their other activities, some veterans' organizations provided one or more types of insurance for their members and their members' dependents.

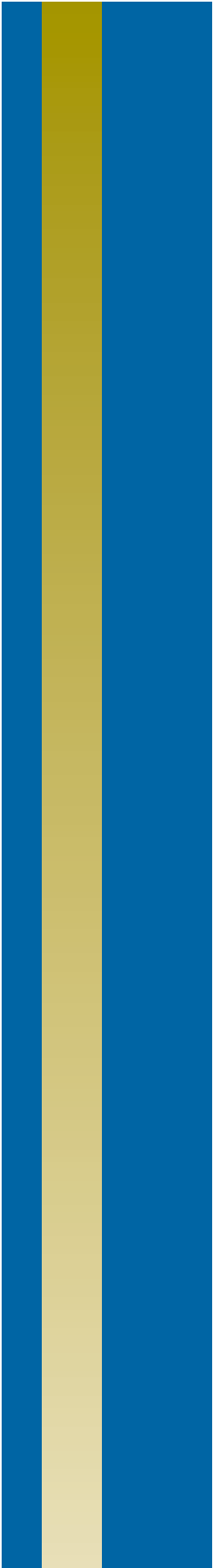
The insurance activity of veterans' organizations was not taxed before passage of the Tax Reform Act of 1969. The unrelated business income tax (UBIT) did not apply to social welfare organizations and social clubs. The 1969 Act extended UBIT to all exempt organizations. To prevent taxation of the insurance activities, IRC 501(c)(19) and 512(a)(4) were enacted in 1972. A 501(c)(19) organization's purposes could include programs involving Americanism, youth activities, community activities and information, and educational programs relating to national security and foreign affairs. The Act also exempted income received by war veterans' organizations from providing certain insurance benefits for their members or the dependents of their members.

Because the ranks of war veterans were thinning, and many organizations were at risk of losing their tax-exempt status due to waning membership, Congress amended IRC 501(c)(19) on September 3, 1982 (Public Law 97-248, 96 Stat. 640), by deleting the requirement that 75% of the members be war veterans. War veterans' organizations are described in IRC 170(c)(3) and are discussed in the chapter on contributions in this publication.

Congress relaxed membership requirements again in 2003 with passage of Section 105 of the Military Family Tax Relief Act by permitting veteran' organizations to count ancestors and lineal descendants as part of their veteran base. The Act also broadened the purposes of veterans' organizations.

Today, depending on their organization and purposes, veterans' organizations may be recognized as tax exempt under the following sections of the Internal Revenue Code:

501(c)(19)  
501(c)(10)  
501(c)(4)  
501(c)(23)  
501(c)(7)  
501(c)(2)  
501(c)(8)



## IRC 501(c)(19) VETERANS' ORGANIZATIONS

*IRC 501(c)(19) applies only to veterans' organizations and their related auxiliaries. These organizations may conduct a broad range of activities without jeopardizing their tax-exempt status. Eligibility for membership in each post or subordinate unit is set forth in its governing documents, i.e., its constitution and by-laws. Section 501(c)(19) contains restrictions on membership makeup for veterans' organizations seeking exemption from federal income tax.*

*This chapter provides answers to the questions most often asked regarding membership, exempt activities, auxiliaries and trusts/foundations.*

### A. Section 501(c)(19) Exemption Requirements

Most 501(c)(19) veterans' organizations are part of a group exemption letter. This occurs when the IRS recognizes a group of organizations as tax-exempt because they are affiliated with a central organization. The central organization is the "head," or main organization. The central organization generally supervises or controls many subordinate organizations, called posts. As part of the group exemption process, the subordinate posts adopt the central organization's uniform governing instruments (constitution, bylaws, charter). The central organization's governing instruments determine the membership requirements for each post. See Chapter 6 of this publication for additional information on group exemption letters.

Section 501(c)(19) provides for the exemption from federal income tax of a post or organization of past or present members of the United States Armed Forces if:

- a. It is organized in the United States or any of its possessions;
- b. At least 75% of its members are past or present members of the U.S. Armed Forces;
- c. Substantially all of its other members are individuals who are cadets or are spouses, widows, widowers, ancestors or lineal descendants of past or present members of the U.S. Armed Forces or of cadets; and
- d. No part of the net earnings of which inures to the benefit of any private shareholder or individual.

### B. Membership Requirements

At least 75% of the members must be past or present members of the United States Armed Forces.

At least 97.5% must be:

- a. Present or former members of the U.S. Armed Forces;
- b. Cadets (including only students in college or university ROTC programs or at Armed Services academies);
- c. Spouses, widows, widowers, ancestors or lineal descendants of individuals referred to in (a) or (b).

**Membership Test Example 1:** X is a national veterans' organization that was issued a group exemption letter. X's constitution and bylaws restrict membership solely to veterans of the U.S. Armed Forces. Post A is a subordinate organization included in X's group exemption and has adopted governing documents identical to X's.

Post A has 1,500 individuals that participate in the club's bar and gaming activities. 1,200 are veteran members who are eligible for membership as described in the post's constitution and bylaws. 300 are social nonmembers. Social nonmembers are not eligible for membership.

The veterans' organization satisfies the section 501(c)(19) membership requirements because its members are all past or present members of the U.S. Armed Forces. The social nonmembers are treated



as members of the general public for 501(c)(19) purposes. Income from nonmember sources may be subject to the unrelated business income tax.

**Membership Test Example 2:** X is a national veterans' organization that was issued a group exemption letter. X's constitution and bylaws do not restrict membership solely to veterans of the U.S. Armed Forces. Post A is a subordinate organization included in X's group exemption ruling, and has adopted governing instruments identical to X's.

Post A has 1,500 individuals that participate in the club's bar and gaming activities. 1,200 are veteran members who are eligible for membership as described in the post's constitution and bylaws. 300 are social members. The social members have a membership category established in post A's governing instruments. The social members were not spouses, widows, widowers or lineal descendants of veterans. Because the social members exceed 2.5% of the post's total membership, the organization cannot qualify for exemption under IRC 501(c)(19).

### **Who are considered past or present “members of the Armed Forces?”**

Veterans are defined as present or former members of the United States Armed Forces. The term “military or naval forces of the United States” and the term “Armed Forces of the United States” each include all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy or the Secretary of the Air Force. Each term also includes the Coast Guard.

Members who are on active duty or are honorably separated from the National Guard and the Reserve Forces are also considered veterans.

## **C. Auxiliaries**

Auxiliary units or societies are corporations or associations formed to support the purposes and activities of a post composed of veteran members. An auxiliary may be separately organized from the post after receiving a charter from their national parent organization. The posts that have a social facility will usually have a separately organized auxiliary with a separate employer identification number. Many central organizations have received a group ruling covering subordinate auxiliaries. Members of auxiliary units that are not separately organized are considered members of the post itself.

If the post is not exempt under IRC 501(c)(19), the auxiliary cannot qualify for tax exemption under IRC 501(c)(19).

### **What are the exemption requirements for auxiliaries?**

An auxiliary unit or society must:

- a. Be affiliated with, and organized in accordance with, the bylaws and regulations of a veterans' organization already exempt under IRC 501(c)(19);
- b. Be organized in the United States or any of its possessions;
- c. Have members that are either members of the 501(c)(19) organization, spouses of those members, or related to those members within two degrees of consanguinity. This includes parents, grandparents, brothers, sisters and grandchildren, but does not include nieces or nephews of the member; and
- d. No part of the net earnings may inure to the benefit of any private shareholder or individual.

### **Do auxiliaries have to be incorporated?**

**NO.** IRC 501(c)(19) requires that the unit or society be organized in the United States or any of its possessions. Auxiliaries may be organized as unincorporated associations or as corporations.



**Can a youth organization sponsored by an exempt post and whose participants are all under the age of eighteen, qualify for exemption under IRC 501(c)(19)?**

If the youth unit is a separate legal entity, meets the requirements for an auxiliary unit under the Code and regulations, and submits an exemption application, it may qualify for recognition of exemption. If the unit does not meet the membership requirements for an auxiliary, it cannot qualify for exemption under IRC 501(c)(19) unless it is an organization of cadets. Youth units may qualify for exemption under other sections of the Code.

**May an auxiliary be recognized as tax exempt under a Code section other than IRC 501(c)(19)?**

**YES.** An auxiliary may qualify for recognition of exemption under IRC 501(c)(3), (4), (7), (8) or (10). A determination can be made only by considering all of the organization's operations and activities.

**Is there any action an auxiliary should take before applying for recognition of exemption?**

**YES.** An auxiliary should contact its central organization to determine if it has received a group ruling covering its subordinate auxiliaries. If the auxiliary has already been included in the group ruling or the central organization is willing to include it in the future, there may be no need for a separate application.

## **D. Trust or Foundation Issues**

Congress originally enacted IRC 501(c)(19) to allow war veterans' organizations to continue providing life, accident or health insurance benefits for their members and their members' dependents. All 501(c)(19) organizations are now permitted to provide these benefits. Most veterans' organizations do not provide these benefits directly; they contract out to existing public insurance companies. The administration of the insurance programs is often conducted by trusts

or foundations created for this specific purpose. These organizations may also qualify for exemption under IRC 501(c)(19). Should a veterans' organization wish to provide the insurance benefits directly, it may do so through the creation of insurance set-asides.

**What are the requirements for a trust or foundation to be exempt under IRC 501(c)(19)?**

A trust or foundation must have a legal existence and be organized exclusively for IRC 501(c)(19) purposes. Its income must be used only to fund a veterans' organization, the charitable purposes listed in IRC 170(c)(4), or for an insurance set-aside. If its funds are used for charitable purposes, the trust or foundation must provide in its organizing document that upon dissolution its funds will continue to be dedicated to charity. A trust or foundation cannot unreasonably accumulate income. Unless the trust or foundation is an insurance set-aside, a substantial portion of the income must actually be distributed each year.

**What is an insurance set-aside?**

A 501(c)(19) organization may create an insurance set-aside without creating a separate trust or foundation. A restricted fund can be created, if adequate records are kept describing the amounts and designated purposes of the funds set aside.

Amounts paid by members for insurance benefits and set aside are not subject to tax as unrelated business income. To be considered set aside, the funds must be kept separate from the organization's general funds and accounts. A set-aside is limited to amounts reasonably necessary to provide insurance benefits which are, in fact, provided, and must be used solely for paying those benefits to the members or for administering the insurance program. Excess trust funds from an experience gain may be used for IRC 170(c)(4) purposes or for the reasonable costs of distributing funds for such purposes.





## E. Exempt Activities

501(c)(19) veterans' organizations have been permitted broad purposes by Congress to include one or more of the eight purposes listed below. It is not necessary that the organizations' purposes or activities include all the listed purposes to be exempt, but they cannot have purposes of a substantial nature that are not listed and retain 501(c)(19) status. The exempt purposes include:

- a. Promoting the social welfare of the community as defined in Regs. 1.501(c)(4)-1(a)(2);
- b. Assisting disabled and needy war veterans and members of the U.S. Armed Forces and their dependents, and the widows and orphans of deceased veterans;
- c. Providing entertainment, care and assistance to hospitalized veterans or members of the U.S. Armed Forces;
- d. Carrying on programs to perpetuate the memory of deceased veterans and members of the Armed Forces, and to comfort their survivors;
- e. Conducting programs for religious, charitable, scientific, literacy or educational purposes (as set out in IRC 170(c)(4));
- f. Sponsoring or participating in activities of a patriotic nature;
- g. Providing insurance benefits for their members or dependents of their members, or both; or
- h. Providing social and recreational activities for their members.

### **Are the following activities consistent with the requirements for exemption?**

- a. Reviewing proposed legislation that may affect veterans, at both the federal and state levels;
- b. Testifying before a governmental body with respect to such legislation; and
- c. Informing members about the proposed legislation.

**YES.** Representing veterans before legislative bodies concerning legislation that affects veterans as a class has historically been a function of veterans' organizations. Such organizations are uniquely positioned to provide information regarding proposed legislation to both veterans and the legislature.

### **What types of activities would be considered promoting social welfare of the community for purposes of IRC 501(c)(19)?**

The following are examples of some of the activities conducted by veterans' organizations that are promoting social welfare:

**Example 1:** Sponsoring youth activities whether or not the activity is limited to the members' children. Buying equipment and uniforms for a youth athletic team is an appropriate post activity.

**Example 2:** Allowing other community organizations such as the Lions Club, a public school organization or a community group to use the post facility without charge.

**Example 3:** Sponsoring the Boy Scouts, Girl Scouts or other youth units of the post, and providing scholarships for students.

**Example 4:** Making donations to charities described in IRC 501(c)(3), such as hospitals, the Red Cross and the local Community Chest.

**Example 5:** Visiting sick or hospitalized members, veterans and their families.

### **When a post sponsors a Boy or Girl Scout or other youth troop, must the Scoutmaster or youth leader be a member of the post?**

**NO.**

### **What types of social activities are appropriate for a 501(c)(19) organization?**

Social and recreational activities are exempt activities if conducted among post members. Such activities may include:

- The operation of a bar and/or restaurant,
- Gambling, and
- Dinners and dances.

# What are IRC 501(c)(19) purposes?

**IRC 501(c)(19) purposes are broad, but not unlimited. Appropriate purposes include:**

- a. Promoting the social welfare of the community as defined in Regs. 1.501(c)(4)-1(a)(2);**
- b. Assisting disabled and needy war veterans and members of the U.S. Armed Forces and their dependents, and the widows and orphans of deceased veterans;**
- c. Providing entertainment, care and assistance to hospitalized veterans or members of the U.S. Armed Forces;**
- d. Carrying on programs to perpetuate the memory of deceased veterans and members of the Armed Forces, and to comfort their survivors;**
- e. Conducting programs for religious, charitable, scientific, literacy or educational purposes (as set out in IRC 170(c)(4));**
- f. Sponsoring or participating in activities of a patriotic nature;**
- g. Providing insurance benefits for their members or dependents of their members, or both; or**
- h. Providing social and recreational activities for their members.**

***Is it appropriate for a post to sponsor joint social and recreational activities with its officially recognized auxiliary?***

**YES.** The auxiliary units and societies that have been recognized as tax exempt under IRC 501(c)(19) support the purposes and activities of the post. Including their members in the social and recreational activities of the post also furthers the purposes of the post.

***If each post member must sell ten tickets to a post's weekly dance and/or dinner to non-members, would the event be an exempt activity?***

**NO.** Recreational activities open to the general public do not further IRC 501(c)(19) purposes. When dinner/dances, coupled with other nonexempt activities, are the primary activities of the post, they adversely affect exemption. Income from activities open to the general public may be taxable. [See Chapter 7 on UBIT]

***Can the post operate bingo, pull-tabs and slot machines for its own members and guests without jeopardizing its tax-exempt status?***

**YES.** Gambling provides recreation for many people. If the gambling is limited to members of the post and their guests (guests must not only be invited by a member, but must have all of their expenses paid by the member), it is an acceptable activity for a 501(c)(19) organization. If the gambling activity is open to the general public, such activity might jeopardize the organization's exempt status or result in the income being taxable as unrelated business income. [See Chapter 7 on UBIT and Publication 3079, *Gaming Publication for Tax-Exempt Organizations*]

***Can a post operate a bar and/or restaurant in its facility?***

**YES.** A bar and restaurant provide a setting for social and recreational activities permissible under IRC 501(c)(19). The use of a bar and/or restaurant must be limited to members of the organization and members of the auxiliary units and their guests (guests must be invited by the member and all expenses must be paid by the member). If these facilities are open to the general public, the income may be subject to tax and/or affect exempt status. [See Chapter 7 on UBIT]

## IRC 501(c)(4) SOCIAL WELFARE ORGANIZATIONS

*Prior to the enactment of IRC 501(c)(19), veterans' organizations were generally recognized as tax exempt under IRC 501(c)(4) because their primary activities promoted the social welfare of the community. There are no membership requirements under IRC 501(c)(4). Exemption is based solely on the type of activities conducted. Contributions to an IRC 501(c)(4) organization are generally not tax deductible. [See Chapter 8 on Contributions] This Chapter answers frequently asked questions about tax-exempt status under IRC 501(c)(4).*

### A. Exempt Status

An IRC 501(c)(4) veterans' organization must be organized as a not-for-profit organization and operated exclusively for social welfare purposes. Its primary activities must promote the common good and general welfare of the people of the community. Social welfare activities do not include social, political or business activities. The net earnings of an IRC 501(c)(4) organization may not be used for private purposes or to benefit private individuals (inurement).

#### **Should an IRC 501(c)(4) veterans' organization ask to be reclassified under IRC 501(c)(19)?**

An organization that satisfies the membership requirements under IRC 501(c)(19) should consider asking to be classified under that section since it permits a broader range of activities. For example, operating a bar and dining facility for members are activities that do not directly promote the social welfare of the community because they are social and recreational in nature but are permissible activities under IRC 501(c)(19). An organization that does not engage in social activities need not seek a reclassification. An organization is well advised to consider the extent of its social and business activities when initially applying for tax exemption.

#### **Will adding a new category of members (social or friends of the post) adversely affect exemption?**

**NO.** Generally, the number or type of members will not affect exemption under IRC 501(c)(4). Exemption under IRC 501(c)(4) is based solely on the type of activities conducted. Membership requirements can be set by the post or its central organization and include any category of members that is allowed by its Charter.

#### **May a central veterans' organization exempt under IRC 501(c)(19) have subordinate posts exempt under IRC 501(c)(4)?**

**YES, AND VICE VERSA.** All subordinates under a group ruling, however, must be exempt under the same section of the Code. For example, the parent may be exempt under IRC 501(c)(4) and list all of its IRC 501(c)(19) subordinate posts on its group ruling. The group ruling may not include subordinate organizations exempt under any other section of the Code. Such organizations may apply for tax exemption on their own.

**May a central veterans' organization have subordinates that are not tax exempt?**

**YES.**

**May an auxiliary unit be exempt under IRC 501(c)(19) if it supports a post that is exempt under IRC 501(c)(4)?**

**NO.** IRC 501(c)(19) provides exemption only for auxiliary units that support IRC 501(c)(19) posts. Auxiliary units supporting an IRC 501(c)(4) post may qualify for exemption under IRC 501(c)(4) by engaging primarily in activities that directly promote the social welfare of the people of the community.

## **B. Exempt Activities**

**What type of activities are appropriate under IRC 501(c)(4)?**

Social welfare activities include promoting, sponsoring and participating in patriotic activities such as Fourth of July parades, school Flag Day ceremonies and

Junior ROTC groups. Assisting needy and disabled veterans, widows or orphans of deceased veterans as well as conducting hospital visits, driving the sick and disabled to the hospital or to medical facilities, recycling, adopting a road for clean up purposes, and sponsoring a youth baseball team, or other youth groups, are also social welfare activities. The social welfare activities listed above are not exclusive.

Social welfare activities do not include social, business or political activities.

**Is operating a bar, restaurant or game room for members an exempt activity?**

**NO.** Operating a bar, restaurant or game room is not a social welfare purpose. Such activities are social and recreational and may be considered business activities. They do not benefit the community as a whole. If activities that do not further social welfare become an organization's primary activities, they may jeopardize tax exemption.

*IRC 501(c)(4) Exemption is based on Activity, not Membership*





**If a post has “bar and grill members” who are not veterans, would the bar and grill operation have an adverse impact on exempt status?**

Membership is not a factor under IRC 501(c)(4). The operation of the bar is a business activity. The income from this activity may be subject to the tax on unrelated business income. [See Chapter 7 on UBIT] If this activity is the primary activity, the organization will not qualify for exemption under IRC 501(c)(4).

**If each post member sells 10 tickets to a weekly dance and/or dinner, would the dance and/or dinner be an exempt activity?**

**NO.** Social dinners and dances, whether limited to members or open to the public for a fee, are not exempt activities under IRC 501(c)(4). Such activities will preclude exemption if they are the post’s primary activities. The income may also be taxable. [See Chapter 7 on UBIT]

**Must participants in post sponsored activities, such as a post baseball team, be members of the post?**

**NO.** There is no requirement that only members of a post participate in a post-sponsored activity as long as the activity promotes social welfare. The main issue is whether the activity is one that is appropriate for an organization described in IRC 501(c)(4).

*Example:* Sponsoring an adult recreational baseball team open to the community and on which some of the post members play would further the exempt purposes of an IRC 501(c)(4) post. So would sponsoring a 4th of July parade for the benefit of the community.

**Is there any difference in the treatment by the IRS of the following youth programs sponsored by a national IRC 501(c)(4) veterans’ organization and/or its posts: (A) post baseball teams; (B) Boy Scout troops; (C) Boys’ and Girls’ State and Nation; and (D) youth units?**

**NO.** Providing educational and recreational activities for youth are permissible social welfare activities.

**Would allowing other organizations such as Lions Clubs, school organizations or community groups to use the post facility without charge be an exempt activity?**

**YES.** Providing the use of the facility without charge or for actual cost to other community organizations would be a social welfare activity. Charging commercial rents or providing commercial services, such as food and beverage service, might result in the income being subject to the unrelated business income tax. [See Chapter 7 on UBIT]

**Is the operation of a thrift store an exempt activity?**

**NO.** This would be an unrelated activity and subject to UBIT unless it meets one of the UBIT exceptions such as volunteer labor or donated merchandise. [See Chapter 7 on UBIT] If operating a thrift shop is an organization’s primary activity, it will not qualify for exemption under IRC 501(c)(4).

**Is reviewing proposed legislation that may affect veterans, at both the federal and state levels, and testifying before a governmental body as to the legislation and also informing members about the proposed legislation an exempt activity under IRC 501(c)(4)?**

**YES.** Representing veterans before legislative bodies concerning legislation that affects veterans as a class is considered a social welfare activity under IRC 501(c)(4).

**May an IRC 501(c)(4) veterans’ organization rate candidates for public office and inform its members as to how the candidates voted on veterans’ issues?**

Rating candidates in this manner is participating in a political campaign on behalf of or in opposition to a political candidate. This type of political activity does not promote social welfare. An IRC 501(c)(4) organization may engage in political activity so long as, when coupled with any other nonexempt activities, it is not the organization’s primary activity.

If the organization does intervene in a political campaign, certain political expenditures may be taxable.



**May an IRC 501(c)(4) veterans' organization encourage greater participation in governmental and political affairs by its members?**

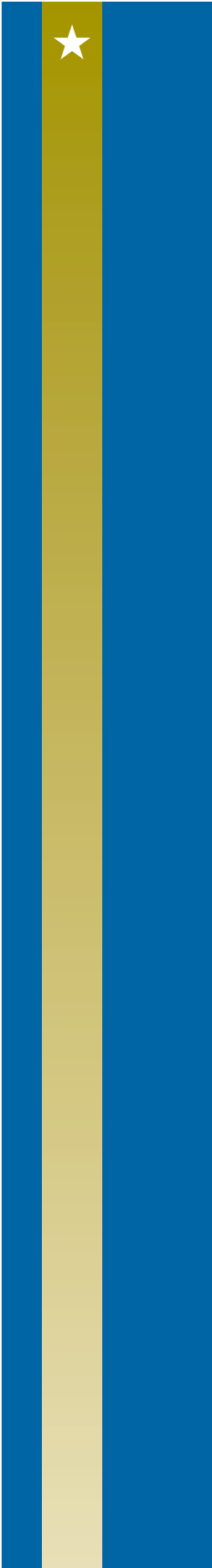
**YES.** For example, developing and distributing educational material designed to create greater interest in government and politics and conducting workshops and seminars on the technical aspects of the political system are permissible activities. Promoting fair campaign practices through nonpartisan analysis, study or research and making the results available to the public is also promoting social welfare.

**Will receiving substantial funding from bingo games open to the general public adversely affect exemption under IRC 501(c)(4)?**

Sponsoring bingo games open to the general public is a commercial activity and does not promote social welfare. However, an organization whose primary activities do promote social welfare may sponsor bingo games, or other charitable gaming, as a way of raising funds. The IRS will look at all the facts and circumstances when determining what activities are primary. The amount of support raised from an activity is not the only factor considered. [See Publication 3079 for additional information regarding gambling.]

# What can an IRC 501(c)(4) veterans' organization do to show that its primary activities promote social welfare?

The best way to establish an organization's primary activities is through its books and records. Keep adequate records of each activity. Recording the amount of time, money and manpower spent in each activity, including fund-raising activities, will help the organization and the IRS identify the organization's primary activities.



## IRC 501(c)(7) SOCIAL CLUBS

*Veterans' organizations whose activities are social and recreational, such as operating a bar, restaurant, canteen or casino for members, may be recognized as tax exempt under IRC 501(c)(7). These clubs are often operated in conjunction with IRC 501(c)(4) veterans' organizations. Social clubs may have different categories of members and are not required to have a specific percentage of veteran members. Contributions to a social club are not deductible. This chapter discusses the requirements for tax-exempt status under IRC 501(c)(7).*

### A. Exempt Status

IRC 501(c)(7) exempts from tax social clubs that are organized and operated primarily for pleasure, recreation and similar nonprofitable purposes. The exemption is based on the logic of allowing members to pool their funds for recreational purposes without being subject to tax, rather than by any compelling public benefit conferred by social clubs. In keeping with this purpose, nonmember income from all sources is limited and taxed as unrelated business income. [See Chapter 7 on UBIT]

To satisfy the organizational requirements for exemption, a club's charter, bylaws or other governing instrument must not include purposes that are not directed toward pleasure and recreation. In addition, an organization will not qualify for exemption if its creating documents or any written policy statement contains a provision which provides for discrimination on the basis of race, color or religion.

A club's members must share common goals and interests that are furthered through its social and recreational activities. The fellowship among members that grows through such participation is considered a key component of a social club. For example, by operating a bar, restaurant, bingo nights and similar recreational facilities and activities for its members and bona fide guests, a veterans' organization is promoting the fellowship and common interests of its members. Clubs that do not engage in activities where its members meet, such as automobile clubs or discount buying clubs, do not have this essential element and do not qualify for exemption.

A bona fide guest is one who is invited by a member to participate in an activity and whose expenses are paid for by the member. If the guest pays for his own recreation or food, the guest is not a bona fide guest. Income generated by nonmember participation in the organization's activities is considered unrelated business income and is ordinarily taxable under IRC 511.

A club is not exempt under IRC 501(c)(7) if it provides commercial services, such as the sale of package liquor or carry out food. Such activities are not traditionally engaged in by social clubs.

#### **May an IRC 501(c)(7) veterans' organization have several types of memberships?**

**YES.** Clubs may establish several types of memberships, such as veterans, auxiliary and friends. The club may specify voting and non-voting members and may choose to limit member benefits, such as the use of the club facilities, based on membership categories. Eligibility requirements, formal admittance procedures and a dues structure are internal matters to be decided in accordance with the club's charter and by-laws. IRC 501(c)(7) does not require that a specific percentage of members be veterans. However, the membership must have shared goals and interests or it may fail to qualify for exemption. A club whose membership categories serve as a way to permit the general public to use the facilities will fail to qualify for this reason.

To determine whether an organization is a club or a business open to the general public, the IRS considers all the facts and circumstances. Questions may be raised when:

- a. Membership requirements are broad or vaguely stated;
- b. The initiation charges or dues are so low that onetime or transient use of the facilities by the general public is encouraged;
- c. There is an unlimited second category of members who have no voice in the management, pay minimal annual dues and whose only rights are to use the club's facilities upon payment for the services;
- d. Management is strenuously engaged in expanding club membership; or
- e. Managers have close physical and financial ties to club activities or facilities that allow them to retain control.

**May an IRC 501(c)(7) veterans' organization be composed of a number of veterans' organizations?**

**NO.** The word "club" applies only to individuals, not to associations composed of artificial persons or member clubs.

**May a home association be recognized as tax exempt?**

**YES.** A home association has a membership structure that provides for veteran members and a second category of "friends" that is related to the post. This is permissible under IRC 501(c)(7).

**May an IRC 501(c)(7) veterans' organization provide its members sickness, death and/or similar benefits?**

**NO.** These types of benefits are not considered social or recreational in nature and are not permitted under IRC 501(c)(7).

**Will the receipt of a substantial amount of nonmember income adversely affect exemption?**

**YES.** As a general rule, an IRC 501(c)(7) club may receive up to 35% of its gross receipts from sources outside its membership. This includes investment

income. Within the 35% limitation, no more than 15% of the gross receipts may be derived from the use of a club's facilities or services by the general public. Gross receipts are the total amounts the organization received from all sources during its annual accounting period, without subtracting any costs or expenses.

**Are membership dues and/or assessments tax deductible?**

**NO.** In fact, any solicitation for membership dues and/or assessments should include a disclaimer statement that the dues are not tax deductible.

## **B. Exempt Activities**

**Will conducting joint activities with local veterans' posts jeopardize exemption?**

It might if the income received by the IRC 501(c)(7) club from nonmembers would be subject to UBIT. In the event such amounts exceed 15% of gross income, exemption could be jeopardized.

**If a member hosts a luncheon for his garden club at the IRC 501(c)(7) club, would the garden club members be considered bona fide guests?**

Amounts paid to a social club by visiting members of another social club, such as the garden club, are usually considered amounts from nonmembers.

Income paid by members for bona fide guests, however, is treated as member income. There are some circumstances under which nonmembers who use a club's facility will be assumed to be bona fide guests. For instance, when there is a group of eight or fewer persons, at least one of whom is a member who pays the entire bill, the nonmembers are generally considered bona fide guests. In larger groups where 75% or more of the group are members and payment is from the members, the nonmembers are considered bona fide guests. There are instances, however, where the use of the club facilities is so divorced from any member purpose that it would be highly improbable that the member incurred the cost of the use of the facilities for personal reasons.



**Example:** If an outside group arranges for the use of the facilities through a club member and agrees to reimburse the member for the cost, the IRS would question whether those individuals were bona fide guests.

**Is sponsoring bingo games, casino nights and other types of games of chance, for members and their bona fide guests, a permissible activity?**

**YES.** Club members may engage in any number of recreational activities including bingo nights, casino nights and other games of chance without jeopardizing the exempt status of the club. Income from such activities is considered member income and is not taxable under IRC 511.



*Opening the activities of the club to nonmembers is not an exempt purpose. Income generated from gaming from nonmembers is subject to UBIT and may jeopardize exemption if the amount exceeds 15% of the club's gross income.*



## IRC 501(c)(8) AND 501(c)(10) FRATERNAL ORGANIZATIONS

This chapter discusses fraternal beneficiary organizations recognized as tax exempt under IRC 501(c)(8) and 501(c)(10).

### A. Exempt Status

To qualify for exemption under IRC 501(c)(8), an organization must:

- a. Be fraternal in nature,
- b. Operate under the lodge system, and
- c. Provide for the payment of life, sick, accident or other benefits to its members.

An IRC 501(c)(8) organization may create a separate insurance subsidiary to provide benefits to its members. These subsidiary organizations may also qualify for exemption under IRC 501(c)(8).

A fraternal organization exempt under IRC 501(c)(10) is one that is described in IRC 501(c)(8) except

that it does not provide benefits to its members. The net earnings of IRC 501(c)(10) organizations must be devoted to charitable, religious, scientific, literary, educational or fraternal purposes.

#### **What does it mean to be fraternal in nature?**

“Fraternal” means brotherly or friendly. The members of an IRC 501(c)(8) or IRC 501(c)(10) organization must share common ties and come together to pursue common goals. An organization whose members share nothing other than membership or a desire to participate in member benefits is not fraternal in nature and will not qualify for exemption. An organization whose members are mostly veterans who have joined together to pursue common goals is fraternal in nature.

#### **Would an organization composed only of veterans of the United States Armed Forces qualify for exemption under IRC 501(c)(8) and 501(c)(10)?**

**YES.** Provided the organization satisfies the other requirements for exemption, the shared experience of serving in the Armed Forces is sufficient to establish that the members share a common bond.

Through shared activities in pursuit of these common goals, member friendships are strengthened and veterans as a class are strengthened.

#### **What does “operating under the lodge system” mean?**

Operating under the lodge system means carrying on activities under a form of organization that is comprised of local branches chartered by a parent organization. The local branches, called lodges or chapters, must be separately organized and self-governing but operated under the general control and supervision of the parent lodge and subject to its rules, laws and edicts. Both the parent and local organizations must be active. This means that each



*Through shared activities in pursuit of these common goals, member friendships are strengthened and veterans as a class are strengthened.*

organization holds regular meetings at a designated place, adopts a representative form of government, and performs its work according to a set ritual.

**What type of benefits must an IRC 501(c)(8) organization provide?**

To qualify for exemption, an IRC 501(c)(8) organization must offer some type of insurance benefits. Life insurance, accidental death and dismemberment insurance and health insurance are some types of appropriate benefits. Benefits need not be limited to insuring members against personal risk, but may also include insurance against property loss. An organization is not required to offer all types of insurance benefits.

**Must every member of an IRC 501(c)(8) organization subscribe to the benefits offered?**

**NO.** It is not required that all members be covered by the benefits program or that all eligible members purchase policies for the benefits offered. Organizations may have two classes of members (beneficial and non-beneficial). Most of the members must, however, be entitled to participate in the benefits program.

**Can an organization formed to provide life, sick, accident or other benefits to its members who are veterans qualify for exemption under IRC 501(c)(8)?**

An organization formed to provide benefits to its members will qualify for exemption if it is fraternal in nature and operated under the lodge system. It is not necessary that any one feature predominate; however, all features must be present.

**May an IRC 501(c)(10) organization whose members are veterans spend its net earnings solely for the operation of a bar, grill and casino for members of the lodge?**

**YES.** Fraternal activities include social and recreational activities for members of the lodge. IRC 501(c)(10) permits a lodge to use its net earnings for fraternal and charitable purposes but does not require that a lodge use any of its funds for charity. Opening these activities to nonmembers may, if extensive, jeopardize exemption or cause the income to be taxed as UBIT. [See Chapter 7 on UBIT]

## B. Exempt Activities

**What types of activities are permissible?**

Veterans' organizations exempt under IRC 501(c)(8) and IRC 501(c)(10) may conduct a wide array of activities. Such activities are often the same as those conducted by IRC 501(c)(19) organizations and may include:

- a. Promoting the social welfare of the community,
- b. Assisting needy and disabled veterans, widows, or orphans of deceased veterans;
- c. Providing entertainment, care and assistance to hospitalized veterans or members of the Armed Forces of the United States;
- d. Perpetuating the memory of veterans and comforting their survivors;
- e. Conducting programs for religious, charitable, scientific, literary, or educational purposes;
- f. Sponsoring or participating in patriotic activities;
- g. Providing social and recreational activities for members; and
- h. If exempt under IRC 501(c)(8), providing insurance benefits to members.

**May a fraternal organization provide assistance to its own members who are sick and disabled or provide aid to their families without adversely affecting its tax-exempt status?**

**YES.** Assisting sick and disabled members is a beneficial fraternal activity. Providing assistance to members when it is needed improves conditions for a class of persons who are engaged in a common pursuit, and tends to unite them by creating a stronger bond of sympathy and interest.

**May a fraternal organization operate an orphanage for children of its members and their families or a home for elderly members?**

**YES.** These are traditional fraternal activities that strengthen the common bond among members.



**Will providing educational loans and scholarships for members and their families jeopardize exemption?**

**NO.** The provision of loans and scholarships to members and their families is a fraternal benefit and strengthens the common bond between members.

**May fraternal organizations operate a bar and/or a restaurant for its members and their bona fide guests?**

**YES.** Operating such facilities for members is a fraternal activity and will not jeopardize exemption under IRC 501(c)(8) or IRC 501(c)(10). Allowing nonmember use may result in the income from nonmembers being taxable as unrelated business taxable income (UBTI). [See Chapter 7 on UBIT]

# Who are bona fide guests?

*A bona fide guest is one that is invited by a member to participate in an activity and whose expenses are paid for by the member. If the guest pays for his own recreation or food, the guest is not a bona fide guest.*

*Income generated by nonmember participation in the organization's activities is considered unrelated business income and is ordinarily taxable under IRC 511.*

[See Chapter 7 on UBIT]



It is the responsibility of the exempt organization to demonstrate that a nonmember is a bona fide guest so that the income is not taxable. The organization should maintain adequate books and records to identify members and their bona fide guests and distinguish them from nonmembers.

***May fraternal organizations receive substantial investment income without adversely affecting exemption?***

**YES.** There are no income limits. Keep in mind that IRC 501(c)(10) organizations must spend their net earnings solely for charitable and fraternal purposes.

***May fraternal organizations rent facilities to nonmembers without adversely affecting exempt status?***

Use of the lodge facilities by nonmembers does not further the exempt purposes of the lodge. This includes rental of banquet rooms and purchase of catering services for private parties as well as use of the bar and restaurant by nonmembers. The income generated by such activities is generally subject to UBIT. [See Chapter 7 on UBIT]

***Does an IRC 501(c)(8) organization jeopardize its exempt status if it continues to collect premiums on insurance policies sold to members who have been expelled, suspended or have withdrawn?***

**NO.** An owner of an insurance policy has the right to keep the policy in effect. This right is not affected by expulsion, suspension or withdrawal from the sponsoring organization.

***Does an IRC 501(c)(8) organization jeopardize its exempt status if it contracts to sell additional insurance to individuals who are no longer members because they have been expelled, suspended or have withdrawn, or to nonmembers?***

The sale of additional insurance policies to terminated members or to nonmembers is not an exempt activity for an IRC 501(c)(8) organization. The income generated by sales of policies to nonmembers is subject to UBIT. [See Chapter 7 on UBIT] If the sale of insurance to nonmembers is substantial, the IRS may question whether the organization is an insurance company and no longer exempt under IRC 501(c)(8).



## TITLE HOLDING CORPORATIONS

*Veterans' organizations exempt under IRC 501(c)(19), 501(c)(4), 501(c)(7), 501(c)(8) and 501(c)(10) may form separate title holding organizations, recognized as exempt under IRC 501(c)(2), to hold title to their facilities. This may be necessary in states where non-incorporated entities cannot hold title to real property. It may also be a useful device to limit liability, facilitate administration and increase borrowing power. This chapter discusses exemption requirements and activities of title holding corporations.*

An IRC 501(c)(2) organization must be organized for the exclusive purpose of holding title to property, collecting income from that property and turning that income over to the exempt organization that controls it. This type of organization should not engage in any unrelated trade or business. Certain UBIT exceptions exist for debt-financed income, interest, annuities, royalties and/or rents. [See Chapter 7 on UBIT]

### **Does a title-holding corporation have to incorporate under state law?**

**NO.** The term “corporation” as used in IRC 501(c)(2) includes associations and business or commercial trusts. The purpose for creating the organization will often dictate the organizational form chosen.

### **May a corporation whose purposes are identical to the veterans' organization it supports, but whose only activity is holding title to the post, lodge or clubhouse, collecting rent from the supported organization, and using the rent to pay for the upkeep of the facility qualify for exemption under IRC 501(c)(2)?**

**YES.**

### **May a title-holding organization operate “video poker machines” or other forms of gambling for members of the veterans' organization that forms it?**

**NO.** The operation of casino nights, video poker machines or other forms of gambling are considered recreational activities and are outside the scope of IRC 501(c)(2).

### **May an IRC 501(c)(2) organization receive an incidental amount of its income from the operation of vending machines, such as a soft drink machine, located on its property without jeopardizing its exemption?**

**YES.** A small amount of income generated from an unrelated trade or business, such as the operation of a vending machine, will not cause an IRC 501(c)(2) organization to lose its exemption. To be considered incidental, the amount of income generated by all unrelated activities must not exceed 10% of the organization's gross receipts. Income generated from any unrelated trade or business is subject to tax under IRC 511. [See Chapter 7 on UBIT]

### **May a title-holding organization lease “video poker machines” or other gambling devices to the veterans' organization that forms it?**

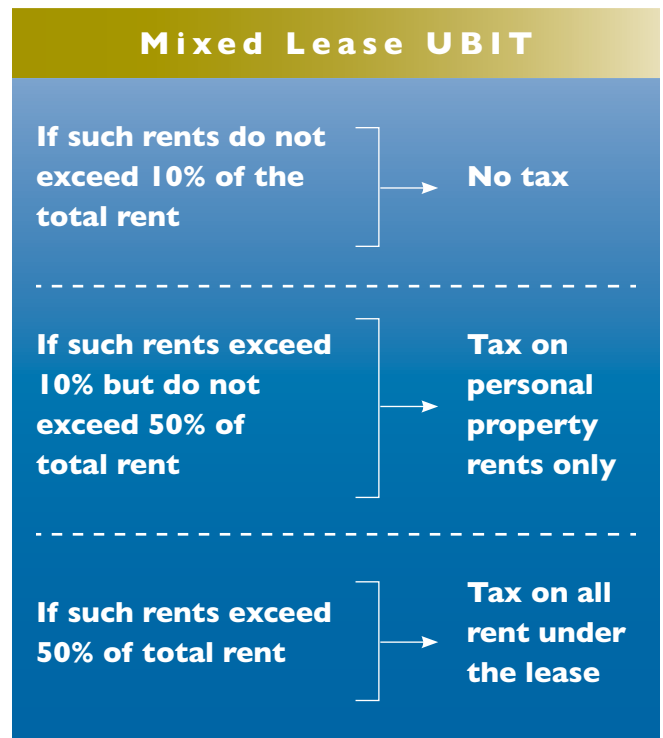
Video poker machines and other gaming devices are personal property. If an IRC 501(c)(2) organization's income from the rental of such personal property, when added to the receipts from any other unrelated business activities, exceeds 10% of gross receipts, it will not qualify for exemption.

# May a title-holding corporation operate a bar and restaurant for the members of a veterans' organization in its facility?

**NO.** The operation of a bar and restaurant, as well as other social and recreational uses, is outside the scope of IRC 501(c)(2).

## **Will income from the rental of personal property, such as chairs and tables, adversely affect exemption or result in UBIT?**

The rental of personal property is considered the conduct of a trade or business and may jeopardize exemption under IRC 501(c)(2) if, along with other unrelated receipts, the income generated exceeds 10% of gross receipts. There is an exception, however, for personal property that is leased with real property. The rental of personal property as part of a mixed lease will not affect exemption but may result in some or all of the income generated from the lease being taxed under IRC 511. The receipt of rent from personal property in a mixed lease has the following UBIT consequences:



## GROUP RULINGS

*A central organization may apply for a group ruling for itself and all of its affiliated organizations. Subordinates covered by a group ruling do not have to file an application for recognition of tax exemption. The procedures for obtaining a group ruling are set forth in Rev. Proc. 80-27, 1980-1 C.B. 677.*

**If a subordinate post, exempt under IRC 501(c)(19), doesn't meet the membership requirements because of declining membership, can it still be listed on the group ruling?**

**NO.** When a post fails to meet the membership requirements, it is obligated to notify its parent and the IRS that it does not qualify for tax exemption and should not be listed in the group exemption roster. The post may continue to maintain its affiliation with the parent, but it may not maintain exemption as a subordinate post under the parent's group ruling.

**May auxiliary units be included in a parent's group ruling under IRC 501(c)(19)?**

**YES.** As long as the auxiliaries meet the criteria for exemption under IRC 501(c)(19), they may be included in the group ruling.

**May members of one subordinate post use the facilities of another subordinate post without jeopardizing exemption of the host post?**

**YES.** Members of the various posts exempt under the same group ruling may use the facilities of and participate in activities of the other posts.

**May a central veterans' organization exempt under IRC 501(c)(19) have subordinate posts exempt under IRC 501(c)(4)?**

**YES, AND VICE VERSA.** However, all subordinates under a group ruling must be exempt under the same section of the Code. For example, the parent may be exempt under IRC 501(c)(4) and all of its subordinate posts exempt under IRC 501(c)(19). The group ruling may not include subordinate organizations exempt

under other sections of the Code. Those subordinate organizations may apply for tax exemption on their own.

**May a central veterans' organization have subordinates that are not tax exempt?**

**YES.**

**What effect will adding new posts or dropping non-qualifying posts from a group ruling have on the parent's exempt status?**

As long as the parent organization continues to satisfy the legal requirements for exemption, neither adding new posts nor dropping non-qualifying posts from the group ruling will affect that status.

**May a subordinate post be included in the parent organization's consolidated information return?**

**YES.** A subordinate must have the same fiscal year as the parent organization to be included in the return.





## UNRELATED BUSINESS INCOME TAX (UBIT)

*Almost all exempt organizations must pay tax on income earned in an unrelated trade or business. To be considered unrelated, a trade or business must be **regularly carried on** and **not substantially related** to the performance of an organization's exempt purposes other than its need to raise money to carry on its programs.*

The term “trade or business” includes any activity carried on for the production of income whether from selling goods or performing services. Business activities are regularly carried on if they are conducted frequently or continually, and are pursued in a manner similar to comparable commercial activities of nonexempt organizations. Unless the business activities, apart from the income generated, contribute importantly to the accomplishment of the organization's exempt purposes, they are not substantially related.

Certain activities have been specifically excluded from the definition of unrelated trade or business by Congress. The exclusions that apply to veterans' organizations include:

- a. **Volunteer Labor:** Any business in which substantially all of the work is performed by volunteers without compensation. Compensation may include tips and non-cash benefits. For example, if your members volunteer to sell tickets to the general public for your sponsored dances, and substantially all the work in organizing and conducting the event is done by volunteers without compensation, the activity is not an unrelated trade or business.
- b. **Selling Donated Merchandise:** A business that consists of selling goods substantially all of which have been received as gifts or contributions. For example, the income generated from a thrift shop selling donated goods, with the proceeds going to the exempt organization, is not an unrelated trade or business.
- c. **Certain Bingo Games:** To qualify for this exclusion, the bingo game must be legal and must be conducted in a jurisdiction that does

not permit commercial bingo. The game must be one in which wagers are placed, the winners determined, and prizes are distributed in the presence of all persons placing wagers in that game. The definition of bingo does not include the sale of pull-tabs, instant bingo or similar raffles. Bingo also does not include any other gambling activities.

- d. **Low Cost Articles:** For organizations eligible to solicit charitable contributions, the distribution of low cost articles, such as stationery or candies, incidental to the solicitation is not an unrelated trade or business.
- e. **Exchange or Rental of Member Lists:** The exchange or rental of member or donor lists between posts of war veterans eligible to receive tax-deductible contributions is not considered an unrelated trade or business.

Once it has been determined that a business activity is unrelated, there are several special rules that apply to computing the amount of the income that will be taxable. Certain dividends, interest, annuities, royalties and rents may be excluded in whole or in part. The expenses, depreciation and similar items **directly connected** with the conduct of the unrelated business may also be deducted. For example, the salaries of fulltime employees conducting the business and depreciation of a building used entirely in the conduct of the business are deductible. There are special rules for determining the amount of taxable income generated from debt-financed property. For further information regarding the computation of UBIT, please request Pub. 598. Whether a specific activity is taxable often depends on the section of the Code under which a veterans'

organization is exempt. This Chapter provides answers to general UBIT questions, as well as to questions relating specifically to IRC 501(c)(19), (4), (7), (8) and (10).

## A. General UBIT Questions

**A post hires employees to operate its bar and dining facility that is open to the public on a limited basis. Will the income from these facilities be subject to UBIT?**

**YES.** How much of the income is taxable depends on the section of the Code under which the veterans' organization is exempt.

The operation of a bar and restaurant for use by members or the general public is not an exempt activity for an IRC 501(c)(4) organization. Because this activity is a trade or business, regularly carried on, and not substantially related to exempt purposes, all of the income is taxable. If the bar and restaurant is the primary activity, exemption may be lost.

Social activities, such as the operation of the bar and restaurant, are appropriate for veterans' organizations exempt under IRC 501(c)(19), 501(c)(7), 501(c)(8) and 501(c)(10), as long as the activities are limited to members and their bona fide guests. Permitting nonmember use of these facilities is not related to the accomplishment of exempt purposes and will result in the income from the nonmembers being taxable. For an IRC 501(c)(7) organization, nonmember income that exceeds 15% of gross receipts will jeopardize exemption.

**Are weekly fundraisers that are open to the general public, such as spaghetti dinners, breakfasts and dances, subject to UBIT?**

**YES.** Charging admission for fundraising activities, such as dinners, breakfasts and dances, is a trade or business. [Admissions paid by members may be considered related income if social or recreational activities further exempt purposes.] Because the activity is conducted on a weekly basis, it is "regularly carried on," and because the activity is open to nonmembers, it is not "substantially related" to the exempt purposes of a veterans' organization under any Code section. Unless one of the exceptions, such as

the volunteer labor exception, applies, the income from these activities is taxable.

**Can a member of a post sell tickets to a social function to nonmembers without generating Unrelated Business Taxable Income (UBTI)?**

Selling tickets to social functions to nonmembers is an unrelated activity for all veterans' organizations. If this activity only occurs occasionally, it may not be considered "regularly carried on" and will not be taxable. If the activity is regularly carried on, the income may still be excluded from tax under the "volunteer labor exception."

*Example:* A post member who is a volunteer sells his neighbor tickets to the post's weekly shrimp dinner. The dinner is prepared and served, and the facility is cleaned by volunteers. This activity would meet the volunteer labor exception.

**Is income from the sale of advertising in flyers, newsletters and programs taxable as Unrelated Business Income (UBI)?**

**YES.** Income generated from the sale of advertising in a post's flyers, newsletters, programs and bulletins is unrelated to the exempt purposes of veterans' organizations under any section of the Code. Unless one of the exceptions applies, the income from this source is taxable.

**Does advertising a social function to the public by "word of mouth" affect whether the social function generates UBTI?**

**NO.** The method of advertising does not change the nature of the activity.

**How should a post treat the income from the rental of its banquet hall to members and nonmembers for weddings and similar functions? How should it treat income from the rental of its facilities to other exempt or community organizations?**

The rental of banquet facilities on a regular basis to both members and nonmembers for weddings and similar personal functions is an unrelated trade or business for



veterans' organizations exempt under any section of the Code. Whether the rental of the facilities to other exempt or community organizations is an unrelated trade or business depends on the Code section under which the organization is exempt. The rental of such facilities may be related to the permissible purposes of organizations exempt under IRC 501(c)(4), 501(c)(19), 501(c)(8) and 501(10). An IRC 501(c)(7) organization may not rent its facilities to nonmembers without realizing UBTI.

If the rental of the facility is unrelated to the organization's exempt purposes, the rental income may or may not be taxable. The rents from real property are excluded in computing the tax. If the rent includes personal services, such as catering or decorating, it is not considered rent from real property and would be taxed. Rents from personal property rented with the real property [mixed lease] may also be excluded if the rents attributable to the personal property do not exceed 10% of the total rent. The rental exclusion does not apply to the rental of personal property or to the rental of debt-financed property.

***If a post sponsors a baseball team (with member and nonmember players) and hosts the games, may all the players purchase food and beverages at the post snack bar without generating UBI?***

**NO.** The unrestricted use of post facilities by nonmembers is not related to the exempt purposes of the post. The sale of food and drinks to nonmembers may result in the income being taxed unless the volunteer labor exception applies. The operation of a snack bar is not an exempt activity for an IRC 501(c)(4) organization and all of the income generated from this business would be taxable.

***Would income from selling liquor or food to members or the public for consumption off the premises be subject to UBIT?***

**YES.** Selling liquor and food for consumption off the premises does not further the exempt purposes of a veterans' organization. All income from off-premises sales is subject to UBIT, unless a specific exception applies.

***Is income from the operation of a thrift shop subject to UBIT?***

**NO.** Generally, operating a thrift shop is not considered an unrelated business because substantially all of the merchandise has been donated. The volunteer labor exception may also apply if the shop is operated by volunteers.

***Is the income from a post's golf course, swimming pool and snack bar that is open to the public on a regular basis subject to UBIT?***

**YES.** Recreational facilities open to the public for a fee do not further the exempt purposes of veterans' organizations. Because these facilities are operated in a commercial manner, the income is taxable.

***Under a reciprocal agreement, is income from veterans belonging to unrelated veterans' organizations subject to UBIT?***

**YES.** Income received under reciprocal agreements allowing members of unrelated veterans' groups to use post facilities is subject to UBIT.



***Is income from the canteen from members of an unrelated veterans' organization co-sponsoring a patriotic event, such as a parade, and meeting before and after at your post subject to UBIT?***

**NO.** The sale of food and beverages to members of unrelated veterans' organizations co-sponsoring a parade and assembling at one or the other's canteen either before or after the event is substantially related to the exempt purposes of either organization.

***Is income from the sale of souvenir liquor bottles bearing the organization's emblem subject to UBIT?***

**YES.** The sale of souvenir liquor bottles is not substantially related to any exempt purpose of a veterans' organization. If the sales are regularly carried on and no exceptions apply, all income from this source is taxable.

***Is income from poker machines in a post's bar and from monthly "Las Vegas Nights" subject to UBIT?***

Gambling among members is considered a recreational activity rather than an unrelated trade or business for posts exempt under IRC 501(c)(19), 501(c)(7), 501(c)(8) and 501(c)(10). Income from members and bona fide guests is not subject to tax. Allowing members of the general public to use post facilities to gamble or engage in other recreational activities is not a related activity. Income from nonmember sources is subject to tax. Nonmember income in excess of 15% may jeopardize exemption under IRC 501(c)(7). Gambling and recreational activities are not exempt activities under IRC 501(c)(4) and, if primary, may jeopardize exemption. Income from these sources is taxable unless a specific exception applies.

***Is the income from weekly bingo games subject to UBIT if the games are open to the general public?***

**NO.** Bingo is not treated as an unrelated trade or business. Bingo is considered a business activity, however, and may jeopardize exemption under IRC 501(c)(4). If conducted by an IRC 501(c)(7) organization, all receipts from bingo are considered nonmember income and if in excess of 15% will jeopardize exemption.

## **B. IRC 501(c)(19)**

***May members of a parent organization and its subordinate posts be granted reciprocal privileges to participate in social and recreational activities and use the facilities of related posts without generating UBTI for those posts of which they are not members?***

**YES.** Permitting members of the related posts to participate in the social and recreational activities of each post furthers exempt purposes.

***May members of the auxiliary be granted privileges by the post it is affiliated with to use the post's facilities and participate in its social and recreational activities without generating UBTI?***

**YES.** If the auxiliary unit is exempt under IRC 501(c)(19), its members' participation in the social and recreational activities of the post is substantially related to the post's exempt purposes.

***May members of a parent organization's separately organized auxiliary be granted reciprocal privileges to participate in social and recreational activities and use the facilities of related posts without generating UBTI?***

**YES.** If the auxiliary unit is exempt under IRC 501(c)(19), its members' reciprocal participation in the social and recreational activities of related posts furthers exempt purposes.

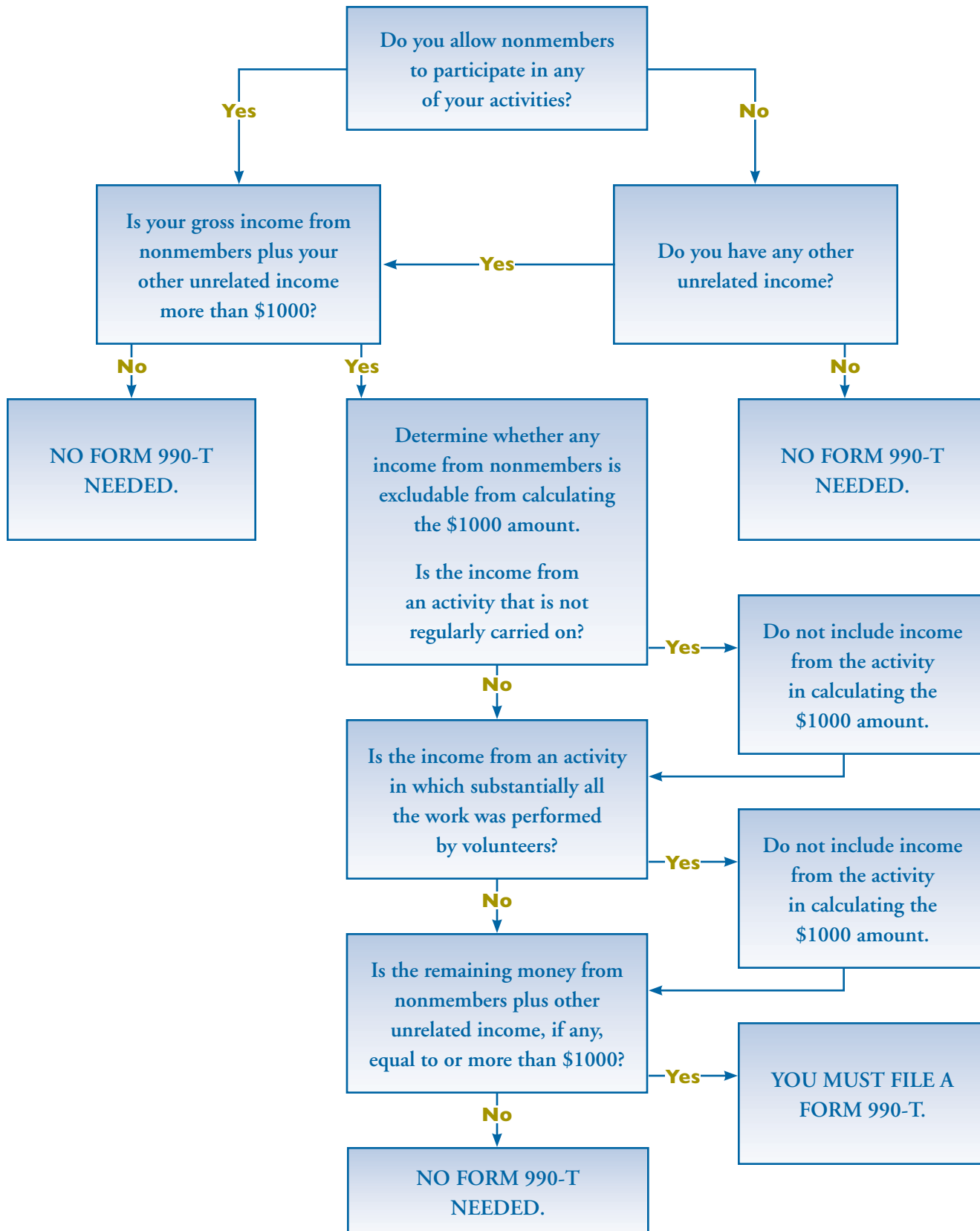
***Can a member of a post bring his or her family to the post's weekly social function without generating UBTI?***

**YES.** Family participation in weekly social functions furthers the IRC 501(c)(19) purpose of providing social activities for the members.

***Are social functions, such as spaghetti dinners, breakfasts and dances for members and their bona fide guests, subject to UBIT?***

**NO.** One of the purposes of a 501(c)(19) organization is to provide social and recreational activities for its members.

# IRC 501(c)(19) & Fraternal Organization UBI Reporting Requirements



**Is UBI generated when access to the bar and dining facilities is restricted by use of a key card system, or the doorman checks membership cards upon entry? Members of the general public unaccompanied by a member are not admitted, nor are guests allowed to pay their bills separately.**

**NO.** Social and recreational activities for members and their bona fide guests further exempt purposes. In a key card situation, no one is admitted unless they are members or bona fide guests of members.

**Is income generated by the non-veteran members of the post from use of the bar subject to UBIT?**

**NO.** Provided the non-veterans are a class of bona fide members described in the post's creating document or by-laws and are within the percentage allowable for exemption, they would be considered members for UBIT purposes.

**Is income from the use of a post's bar and restaurant on a regular basis by active duty military personnel who are not members subject to UBIT?**

**YES.** Active duty military personnel are eligible to be post members. However, if they choose not to join, they are treated as nonmembers.

**Is income from the operation of a hotel facility for nonmember active duty military personnel subject to UBIT?**

**YES.** Unless the hotel is being used by active duty military personnel during a national emergency or armed conflict, the income from nonmembers is subject to tax.

A hotel with a bar, restaurant and meeting rooms operated for use of the members is substantially related, as it provides a place for the members, including those from out of town, to gather for social and recreational activities.

**Are membership dues from posts that are not recognized as exempt under IRC 501(c)(19) taxable to the state or national parent as UBIT?**

**NO.** Dues income is considered related to exempt purposes.

## C. IRC 501(c)(4)

**One of the activities of a post is the operation of a canteen (bar and restaurant) that is open to the public. The primary use is by the veteran members and their guests. Is income from the veteran members and their guests subject to UBIT?**

**YES.** Income from the operation of a canteen (bar and restaurant) by an IRC 501(c)(4) organization is subject to UBIT, whether the income is from members or nonmembers unless one of the exceptions to UBIT applies. The bar and dining activities do not further a social welfare purpose under IRC 501(c)(4). If this activity, coupled with other nonexempt activities, is the post's primary activity, the organization will not qualify for tax exemption.

**Is the income from weekly bingo games conducted by a veterans' organization exempt under IRC 501(c)(4) subject to UBIT?**

**NO.** Bingo is not treated as an unrelated trade or business for purposes of UBIT. It is, however, a business activity that is not an exempt activity under IRC 501(c)(4). If business activities, along with all other nonexempt activities, are the primary activities, the organization will not qualify for tax exemption.

## D. IRC 501(c)(7)

**Is a 501(c)(7) veterans' organization subject to UBIT on its investment income?**

**YES.** All income from nonmember sources, including investment income, is taxable as UBTI.

**Is a 501(c)(7) veterans' organization subject to UBIT on its rental income?**

Rental income from members is generally not taxable. Rental income from nonmembers is taxed.

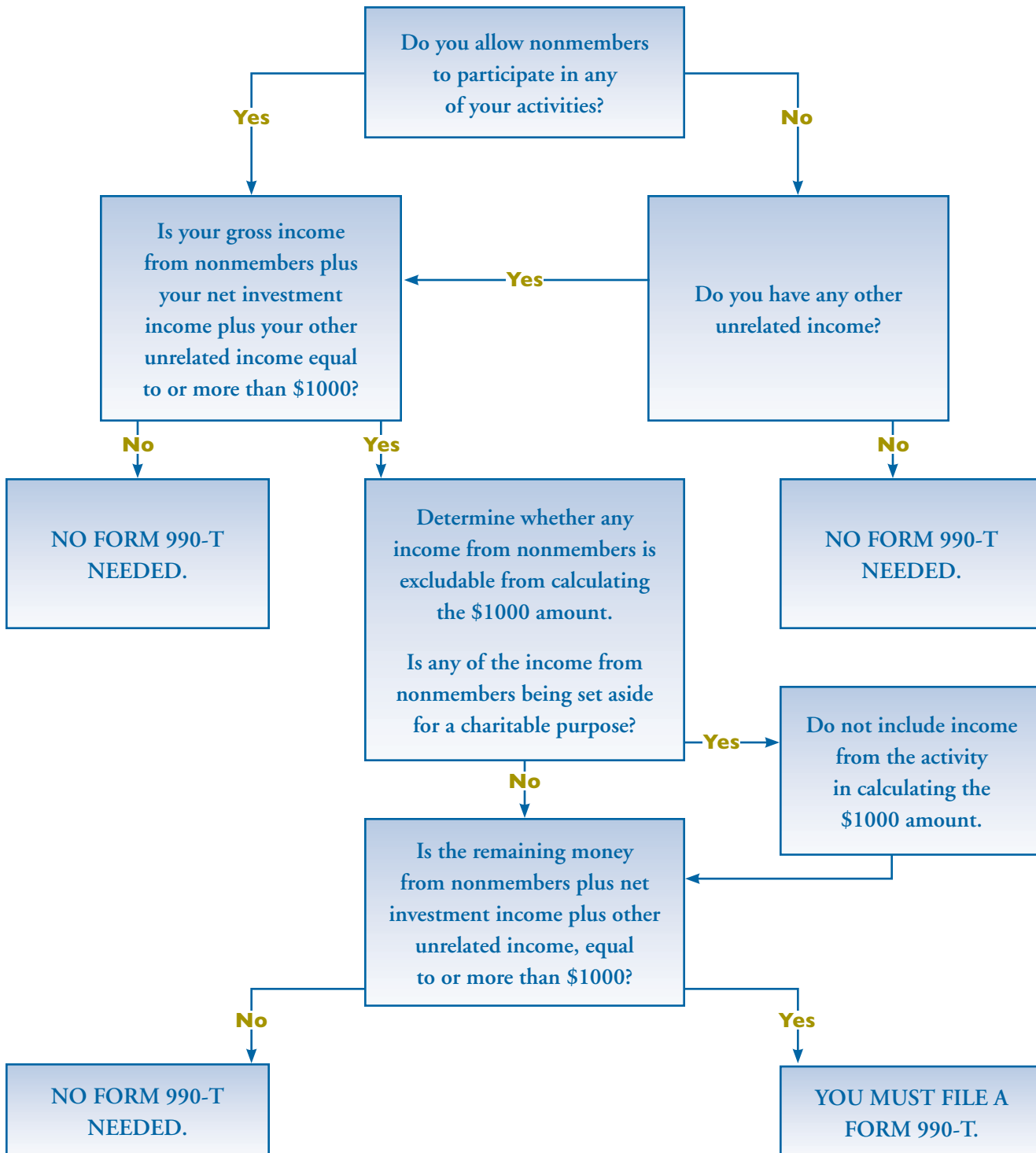
**Is the income from weekly bingo games subject to UBIT if the games are open to the general public?**

All nonmember income, including bingo income, is considered unrelated business income subject to tax for 501(c)(7) organizations. Detailed records may be kept to differentiate between member and nonmember income.

*(continued on page 36.)*



## 501(c)(7) Social Club UBI Reporting Requirements



If such records are available, only the nonmember income will be taxable. If adequate records are not available, all income from bingo will be taxable. Nonmember income from all sources, if in excess of 15%, may jeopardize exemption under IRC 501(c)(7).

***If a nonmember pays to participate in gaming activities at the club, is the income subject to UBIT?***

**YES.** If a nonmember, including a guest of a member who pays his own way, gambles in the club facility, the income is subject to UBIT.

***Is the income from the sale of package liquor or carry out food subject to UBIT?***

The sale of liquor or food for outside consumption is a business regularly carried on and is considered a non-traditional activity for a social club. If these activities are more than incidental to the operation of the club, its tax exemption will be jeopardized. Any amounts generated from a non-traditional business, whether with members or nonmembers, will be subject to UBIT.

***Would income from a fundraiser on behalf of the local veterans' hospital, open to the general public and held in the club facility, be subject to UBIT?***

A social club may conduct some charitable activities in addition to its social activities. The income must be set aside for charitable purposes. If this set-aside is subject to section 501(c)(3) restrictions, this income is not subject to UBIT.

***Is the income generated from the use of club facilities by a member of another veterans' organization subject to UBIT?***

**YES.** Amounts paid to a social club by visiting members of another club are amounts paid by nonmembers. For example, members of other clubs who participate in a Calcutta (wagering pool) are not guests of members of the host club, but are considered members of the general public. Such income is subject to UBIT and may adversely affect the club's exempt status if the relevant percentage limitations are exceeded.

## **E. IRC 501(c)(8) and 501(c)(10)**

***Are organizations described in IRC 501(c)(8) and (10) subject to UBIT?***

**YES.**

***Is income from gambling other than bingo subject to UBIT?***

Gambling among members and their bona fide guests is a recreational and fraternal activity and not subject to UBIT. Nonmember participation in lodge activities, including gambling, is not in furtherance of exempt purposes and will result in the receipts received from nonmembers being subject to UBIT.

***Is income from nonmember use of the bar and restaurant subject to UBIT?***

**YES.**

***Would income from the rental of the lodge to nonmembers be subject to UBIT?***

**YES,** unless it meets one of the exceptions noted above.

## CONTRIBUTIONS TO VETERANS' ORGANIZATIONS

*IRC 170(c)(3) provides an income tax deduction for contributions to a post of war veterans if it is organized in the United States or any of its possessions, and no part of its net earnings inures to the benefit of any private shareholder or individual. This chapter explains when a veterans' organization may be entitled to receive contributions that are deductible under IRC 170(c)(3).*

A donor cannot claim a tax deduction for any contribution of cash, a check or other monetary gift made on or after January 1, 2007, unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or letter) showing the name of the charity, date of the contribution and amount of the contribution. (Section 1217 of the Pension Protection Act (PPA), which amended section 170(f) of the Code.)

Generally, if an organization receives a contribution of charitable deduction property and sells, exchanges or otherwise disposes of the property within 3 years after the donor contributed the property, the organization must file Form 8282, *Donee Information Return*. For more information, see the instructions for Form 8282. (Section 1215(b) of PPA, which amended section 6050L(a) of the Code.)

A war veterans' organization is one that satisfies both a membership requirement and a purpose requirement. To be eligible to receive tax-deductible contributions under IRC 170(c)(3), at least 90% of the members must be war veterans. Substantially all of the other members must be veterans, cadets, or spouses, widows, or widowers of war veterans, veterans or cadets. "War veterans" are defined as persons who have served in the United States Armed Forces during a period of war. These periods are as follows:

- a. April 21, 1898, through July 4, 1902;
- b. April 6, 1917, through November 11, 1918;
- c. December 7, 1941, through December 31, 1946;
- d. June 27, 1950, through January 31, 1955;
- e. February 28, 1961, through May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;

- f. August 5, 1964, through May 7, 1975; and
- g. August 2, 1990, and ending on the date prescribed by Presidential Proclamation or by law.

A war veterans' organization must also be organized and operated primarily for the following purposes:

- a. Furthering comradeship among persons who are or have been members of the Armed Forces;
- b. Honoring the memory of deceased veterans and members of the Armed Forces and aiding and comforting their survivors;
- c. Encouraging patriotism; and
- d. Aiding hospitalized, disabled and needy war veterans and their dependents.

### **Are all contributions to a 501(c)(19) organization deductible under IRC 170(c)(3)?**

**NO.** The requirements for tax exemption under IRC 501(c)(19) are different from the requirements for deductibility of contributions under IRC 170(c)(3).

### **May contributions to a 501(c)(4) veterans' organization be deductible?**

**YES.** If the organization qualifies as a war veterans' organization within the meaning of IRC 170(c)(3), and satisfies both the membership requirement and the purposes requirement, contributions will be deductible.

### **May a member of a 501(c)(19) or 501(c)(4) veterans' organization deduct his travel expenses if they are incurred in the performance of official duties?**

If the organization satisfies the requirements of IRC 170(c)(3) and there is no significant element of personal

pleasure, recreation or vacation in such travel, the expenses may be deducted as contributions.

**Are auxiliary members included as members for purposes of the 170(c)(3) membership test?**

If the auxiliary is a separate organization, its members are not included as members of a war veterans' post for purposes of the 170(c)(3) membership test. When auxiliary members are not in a separate organization or the auxiliary shares the employer identification number of the post, its members are included as members of the post for purposes of the 170(c)(3) membership test.

**Does a 501(c)(19) organization formed primarily to provide social and recreational activities (bar and restaurant for its members) meet the purposes requirement of IRC 170(c)(3)?**

**NO.** Social and recreational purposes are not consistent with classification as a war veterans' organization.


**May a taxpayer deduct contributions to an auxiliary described in IRC 501(c)(19)?**

If the primary purpose of the auxiliary is to support a post of war veterans described in IRC 170(c)(3) and the auxiliary also meets the membership and purpose requirements of that section, contributions will be deductible.

**Are contributions deductible to a veterans' organization exempt under IRC 501(c)(8) or (10)?**

**YES.** If the organization qualifies as a war veterans' organization within the meaning of IRC 170(c)(3), and satisfies both the membership requirement and the purposes requirement, contributions will be deductible.

IRC 170(c)(4) also allows a deduction for contributions to exempt fraternal organizations if such gifts are to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals.



*To receive tax deductible contributions under IRC 170(c)(3), at least 90% of the members must be war veterans.*



*Every organization must keep adequate records to establish liability for or exemption from taxes. Veterans' organizations that are tax exempt need to maintain records to establish that their activities further exempt purposes. Some must maintain records regarding membership requirements. All veterans' organizations must also keep records clearly identifying revenues from each source and expenses related to each source to determine whether any of the income is subject to UBIT. Recognized accounting methods must be used to provide the required information.*



*Each organization's records must show that its purposes and activities continue to be appropriate for an exempt organization. Records must also be kept to establish liability for unrelated business income, employment tax or excise taxes on certain gambling income.*

*Every organization must maintain records of income from each source (related and unrelated) and the expenses attributable to each income source. This is required to substantiate its income and to determine what income, if any, is subject to tax. If applicable, it also must maintain records to determine if there is tip income, employment tax owed and income subject to wagering and other excise taxes. Records should be maintained to show income from veteran members and from nonmembers by activity or income source.*

*If records are not maintained to indicate income from members and nonmembers, or if records are inadequate, all income may be subject to UBIT, and tax exemption may be jeopardized.*

### A. General Recordkeeping Questions

#### **What are the consequences of not maintaining adequate records?**

Failure to maintain adequate books and records may result in a loss of tax-exempt status. The failure or inability to file the required information return or otherwise comply with the Tax Code is a failure to observe the conditions required for the continuation of exempt status.

#### **Volunteers are used to conduct post fundraisers. However, the post pays employees for security and accounting. What records are required to show that these fundraisers are not subject to UBIT under the volunteer labor exception?**

To establish that the fundraisers are conducted by substantially all volunteer labor, records should show the number of volunteers, the hours spent in planning and conducting the activity, and how many paid employees are used. If the paid employees are full-time employees, a reasonable allocation of time spent on the fundraising activity may be made. Records of the income and expenses related to the fundraiser must be maintained.

### B. IRC 501(c)(19)

#### **What records must be maintained to show the composition of membership?**

A post must maintain a list of members and the category of membership (veteran, degree of relation or nonveteran or non-relative). If a post receives deductible contributions, it must also maintain a list of members,

their dates of service, whether they are war veterans as defined in 170(c)(3), and if not, whether they are spouses, widows, or widowers of war veterans, veterans or cadets.

### **What records are required for auxiliary units regarding membership?**

Auxiliary units must maintain a list of members and show their relation to the veteran post member. An auxiliary member must be related to the post member within two degrees of consanguinity.

### **Must a post maintain a record of activities and the number of members, auxiliary members, volunteers and employees involved in each activity?**

**YES.** Records should be maintained to indicate the nature of the monthly activities and to identify individuals participating in the activities (members, auxiliary, social members, youth groups, etc.). If the activity is a fundraiser, records should show who conducted the activity, and whether or not volunteers provided services. Records of activities can include post meeting minutes, historian's records, activity books, commander's books, house committee reports and reports to the parent organization. For those activities that are not related to exempt purposes because they are open to the general public, it is important to keep adequate records to establish how much of the income generated is from nonmember sources and subject to UBIT. **If no records are kept, all the income from activities that are open to the public will be taxed as UBTI.** [See Chapter 7 on UBIT]

### **If the bar and restaurant are open to the general public, what records are required?**

A post must maintain records of gross income and expenses from the bar and dining facility and any other income-producing activities. In cases where the facility or activity is open to the general public (such as bingo, pull-tabs, gaming devices and fundraisers, like shrimp dinners, etc.), the post must maintain a separate record of the gross receipts from members and from nonmembers to determine what amount of income is subject to UBIT. The post must also maintain records of who conducted the activity, whether or not compensation was paid, and the hours involved.

### **What records should be kept when joint fundraising activities are conducted with the auxiliary?**

When an activity is conducted jointly, income and expenses may be allocated. Standard accounting methods may be used to determine a reasonable allocation method. If the activity is open to the general public, a separate record of the gross receipts from members and from nonmembers should be kept to determine what amount of income is subject to UBIT. Records of who conducted the activity, whether or not compensation was paid, and the hours involved should also be maintained.

*Example:* A spaghetti dinner/fundraiser is sponsored jointly by the post and the auxiliary. The income and expenses may be prorated based upon the number of volunteers from each organization that were involved in conducting the activity.

### **Is an auxiliary supporting a specific post required to maintain separate records?**

**YES.** An auxiliary must maintain records to show that its activities and funds are used to support the post. Records should include not only the activity, but also how many members conducted and/or participated in the activity. If it is a fundraiser, records should show how many members conducted the activity, and whether the activity was conducted by volunteers.

### **What records must be kept to establish an insurance set-aside?**

Amounts set aside for insurance payments are not subject to UBIT. A formal set-aside is not required. However, the organization must maintain adequate records describing the amount set aside and the use of the set aside funds.

## **C. IRC 501(c)(4)**

### **What type of records must be maintained to show the composition of membership?**

There is no membership requirement for exemption under IRC 501(c)(4). A post need only maintain a list of members and the category of membership (veteran,

degree of relation, or non-veteran or non-relative) for its own use and to verify dues income.

If a post qualifies under IRC 170(c)(3) to receive tax deductible contributions, it must maintain a list of members, their dates of service, whether they are war veterans, and if not, whether they are spouses, widows, or widowers of war veterans, veterans or cadets.

## D. IRC 501(c)(7)

### **What specific records should a 501(c)(7) organization maintain?**

Records should be maintained to show the amounts and sources of gross income, whether the gross income is from members or nonmembers, and the expenses related to each source of gross income. This is required to determine the amount of member/nonmember income for exemption purposes as well as to determine what income is subject to UBIT.

### **What records must be maintained when nonmembers use the club's facilities?**

The club must maintain adequate records to substantiate the use of facilities by members, nonmembers and bona fide guests. A separate ledger should be kept for gross receipts from nonmembers.

## E. IRC 501(c)(8) AND (10)

### **Must a fraternal beneficiary society maintain a list of members and their status?**

**YES.** Records should be maintained to show the number of members in each class. The organization must also be able to show the common bond between its members.

### **What records should be maintained to show that a fraternal beneficiary organization operates under the lodge system?**

The parent organization must have an organizational document and by-laws permitting lodges and defining the common bond, purposes and rituals required under the lodge system. The subordinates must adhere to the requirements of the parent. Records such as organizational documents, minutes of meetings and

# What type of records must be maintained when certain facilities and functions are open to the public?

The operation of recreational facilities, such as a bar and restaurant, is not considered an exempt activity under IRC 501(c)(4). Fundraisers, sports events, and other types of gambling, are business activities that do not further social welfare purposes. The post must maintain records showing the extent of exempt activities as well as non-social welfare activities to establish that it is operated primarily for exempt purposes.

The post must also maintain books and records that are sufficient to establish the amount of gross income, the sources of gross income, expenses, deductions, credits and why the income would be excluded from UBIT if applicable. The post should maintain records of who conducted the activity, whether or not compensation was paid, and the hours involved.

*Example: Bingo income is not subject to UBIT. Records on the gross revenue and expenses (including payouts) must be maintained. Separate ledgers must be maintained for income from the sale of pull-tabs, the operation of the bar and grill, and other activities not meeting any of the exceptions to UBIT.*



records of actual activities may be used to show that an organization operates under the lodge system.

***Should a fraternal beneficiary organization maintain a segregated fund for charitable purposes?***

**YES.** A segregated fund is recommended.

***Should a fraternal beneficiary organization maintain records of its fraternal activities as well as income from insurance?***

**YES.** A record of activities is important to establish that the organization is more than just an insurance company. Appropriate records include minutes of meetings, flyers and advertisements of activities, and records of gross income and expenses attributable to activities and insurance.

***What records should be maintained regarding life, sick, accident and other benefits provided to members and nonmembers?***

An organization should maintain information regarding types of benefits offered, eligibility requirements for each benefit, the classes of members that may receive the benefit, the number of members and/or nonmembers in each class receiving the benefit, plus all income and expenses from the sale of policies if it is providing insurance. Nonmember income from the sale of insurance is taxable. [See Chapter 7 on UBIT]

***What records should be maintained when a fraternal beneficiary organization operates a bar and/or restaurant?***

Records should be maintained to show whether the bar and/or restaurant is restricted to members and their bona fide guests, or whether it is open to the general public. Records should be maintained to indicate what income is from the members, what income is from the general public and what expenses are allocated to each source of income.



## FILING REQUIREMENTS

*Veterans organizations may be required to report certain payments or information to the IRS. The following is a list of the most frequently required returns, who should use them, how they are used, and when they should be filed.*

Returns	Who Should Use Them	How They are Used	When to File
Form W-2, Wage and Tax Statement Form W-3, Transmittal of Wage and Tax Statement	Organizations with employees		Furnish each employee with a completed Form W-2 by January 31. File all Forms W-2 and Form W-3 with the Social Security Administration (SSA) by the last day of February
Form W-2G, Certain Gaming Winnings For more information on reporting requirements for gaming activities, see IRS Publication 3079, Gaming Publication for Tax-Exempt Organizations.	Any veterans' organization that sponsors a gaming event (raffles, bingo, pulltabs) must file Form W-2G when a participant wins a prize over a specific value amount	The requirements for reporting and withholding depend on the type of gaming, the amount of winnings and the ratio of winnings to the wager	For each winner meeting the filing requirement, the veterans' organization must furnish Form W-2G by January 31; and file Copy A of Form W-2G with the IRS by February 28
Form 941, Employer's Quarterly Federal Tax Return Form 944 Employer's Annual Federal Tax Return	Small employers that have been notified by the IRS to file Form 944 (see form instructions) may use that form; other employers required to file must use Form 941	Use Form 941 or 944 to report Social Security and Medicare taxes and income taxes withheld by the organization, and Social Security and Medicare taxes paid by the organization	See form instructions for due dates
Form 945, Annual Return of Withheld Federal Income Tax	If a veterans' organization withholds income tax, including backup withholding, from non-payroll payments, it must file Form 945	Any veterans' organization that makes payment for services rendered, including entertainment (e.g. bands) of \$600 or more during a calendar year and does not secure the necessary identification number for issuing Forms 1099	File Form 945 by January 31  This form is not required for years in which there is no non-payroll tax liability
Form 990, Return of Organization Exempt from Income Tax, Form 990-EZ Short Form Return of Organization Exempt From Income Tax, Form 990-N (electronic postcard), Electronic Notice for Tax Exempt Organizations Not Required to File Form 990 or 990-EZ	Generally, all veterans' organizations must file Form 990, Form 990-EZ or Form 990-N, unless their central organization files a group return for affiliates that includes the subordinate's information	For tax years 2009-2010, the Form 990, 990-EZ or 990-N thresholds will vary. If you file a Form 990 or 990EZ, you are also required to complete the applicable portions of schedule G to report gaming activities. See <a href="http://www.irs.gov/eo">www.irs.gov/eo</a> for the specific thresholds	Form 990, 990-EZ or 990-N must be filed on or before the 15th day of the 5th month following the end of the organization's tax year. Form 990-N must be filed electronically
Form 990-T, Exempt Organization Business Income Tax Return For more information on unrelated business income, see Unrelated Business Income Tax (UBIT) in Chapter 7	Veterans' organizations with UBIT	Veterans' organizations must file Form 990-T if they generate gross income from an unrelated business of \$1,000 or more for a taxable year	Form 990-T must be filed by the 15th day of the 5th month after the organization's accounting period ends (May 15 for a calendar year accounting period)
Form 990-W, Estimated Tax on Unrelated Business Taxable Income for Tax Exempt Organizations	Veterans' organizations with UBIT	If the tax on unrelated business income is expected to be \$500 or more, the veterans' organization must make estimated tax payments. Use Form 990-W to compute the estimated tax liability	

Returns	Who Should Use Them	How They are Used	When to File
Form 1096, <i>Annual Summary and Transmittal of U.S. Information Returns</i>	Organizations that make certain payments to individuals.	Use Form 1096 to transmit Forms 1099-MISC, W-2G and certain other forms to the IRS	Form 1096 must be filed by February 28 in the year following the calendar year in which the payments were made
Form 1099-MISC, <i>Miscellaneous Income</i>	Organizations that make certain payments to individuals	A veterans' organization must use Form 1099-MISC if it pays an unincorporated individual or entity \$600 or more in a calendar year for one of the following payments: gross rents, commissions, fees, entertainment or other compensation paid to non-employees; prizes and awards; other fixed and determinable income	Veterans' organizations must furnish each payee with a copy of Form 1099-MISC by January 31 and file Copy A of the Form 1099-MISC, with Form 1096, by February 28
Form 11-C, <i>Occupational Tax and Registration Return for Wagering</i>	Veterans' organizations that conduct certain types of wagering	A veterans' organization must use Form 11-C to register certain information with the IRS and to pay the occupational tax on wagering. (See Publication 3079, <i>Gaming Publication For Tax Exempt Organizations</i> , for the definition on what constitutes wagering and exclusions)	Form 11-C must be filed before wagers are accepted. After that, file a renewal return by July 1 for each year wagers are accepted
Form 730, <i>Monthly Tax Return For Wagers</i>	Veterans' organizations that conduct certain types of wagering	A veterans' organization must file Form 730 on a monthly basis if it accepts wagers and/or conducts wagering pools or lotteries.  (See Publication 3079, <i>Gaming Publication For Tax Exempt Organizations</i> , for the definition on what constitutes wagers and exclusions)	Form 730 is filed on a monthly basis. Use Form 730-V, <i>Payment Voucher</i> , to make payment of any taxes due

### **Form 990, Form 990-EZ and Form 990-N**

Exempt organizations, including veterans' organizations, file Form 990, *Return of Organization Exempt From Income Tax*, or Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*, when annual gross receipts, whether related or unrelated, are more than \$50,000 (\$25,000 in tax year 2009). The instructions for completing the Form 990 or Form 990-EZ should be consulted when preparing the form.

Note: *Gross receipts* are the total amounts the organization received from all sources during its annual accounting period, without subtracting any costs or expenses such as gaming prizes, payouts or other expenses.

Form 990-EZ is designed for use by mid-sized exempt organizations when gross receipts are less than \$200,000 and the total assets at the end of the year are less than \$500,000 (\$500,000 in gross income and \$1.5M in assets in tax year 2009). If gross receipts are larger, organizations must file Form 990.

If gross receipts are \$50,000 or less (\$25,000 in tax year 2009), organizations have the option to file Form 990-N, the ePostcard. Filing is simple and only requires a few minutes. Form 990-N can only be filed electronically.

The appropriate form must be filed by the 15th day of the 5th month after the end of the organization's annual accounting period. Failure to file the appropriate forms may subject the organization to penalties. Failure to file for three consecutive years will result in automatic revocation of tax-exempt status as of the filing due date of the third year. To have tax-exempt status reinstated, if revoked for failing to file for three consecutive years, an organization must apply or reapply for exemption and pay the appropriate user fee. (Section 1223 of PPA, which amended section 6033 of the Code)

A central (parent) organization may file a consolidated information return for all entities listed in its group ruling. All subordinates must have the same fiscal year ending date as the parent organization to be included in the group information return.

## Form 990-T

Form 990-T is the *Exempt Organization Business Income Tax Return*. An exempt organization may be liable for tax on its unrelated business income. Unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the purposes that are the basis of an organization's exemption. When gross unrelated business taxable income is over \$1,000, the organization must file Form 990-T. See the Instructions for Form 990-T for additional information on defining gross income and the cost of goods sold.

## Employment Tax Returns

Every employer who pays wages to employees is responsible for withholding, depositing, paying and reporting federal income tax, Social Security and Medicare (FICA) taxes, and federal unemployment tax (FUTA), unless specifically excepted by law or if the taxes clearly do not apply. For more information, see Publication 15, Circular E, *Employer's Tax Guide*, which summarizes the responsibilities of an employer; Publication 15-A, *Employer's Supplemental Tax Guide*; and Form 941, *Employer's Quarterly Federal Tax Return*.

## Form 1120-POL

Form 1120-POL is the *Return for Political Activity*. An exempt organization must file Form 1120-POL for any year in which it:

- a. (i) Expends any amount to influence the selection, nomination, election or appointment of any individual to any federal, state or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors or (ii) makes expenditures relating to an office described in (a); and
- b. Has net investment income.

For more information about filing Form 1120-POL, refer to the instructions accompanying the form.



## AVAILABLE FORMS

- Form 990 - *Return of Organization Exempt From Income Tax*
- Form 990-EZ - *Short Form Return of Organization Exempt From Income Tax*
- Form 990-T - *Exempt Organization Business Income Tax Return*
- Form W-2G - *Certain Gambling Winnings*
- Form 11-9C - *Occupational Tax and Registration Return for Wagering*
- Form 730 - *Tax on Wagering*
- Form 940 - *Employer's Annual Federal Unemployment (FUTA) Tax Return*
- Form 941 - *Employer's Quarterly Federal Tax Return*
- Form 945 - *Annual Return of Withheld Federal Income Tax*
- Form 8109 - *Federal Tax Deposit Coupon*
- Form 8282 - *Donee Information Return*
- Form 1099-MISC - *Miscellaneous Income*
- Form 1096 - *Annual Summary and Transmittal of U.S. Informational Returns*
- Form 1120-Pol - *U.S. Income Tax Returns for Certain Political Organizations*
- Form 5754 - *Statement by Person(s) Receiving Gambling Winnings*  
*(Note: This form is not filed with the IRS)*



### **Dispositions of Donated Property**

If an organization receives a contribution of charitable deduction property and sells, exchanges or otherwise disposes of the property within two years after its receipt, the organization must file Form 8282, *Donee Information Return (Sale, Exchange, or Other Disposition of Donated Property)*. For more information, refer to the instructions for Form 8282.

### **Information Provided to Donors**

An organization receiving tax-deductible contributions must give a donor a disclosure statement for a quid pro quo contribution over \$75. A donor cannot deduct a charitable contribution of \$250 or more unless the donor has a written acknowledgment from the charitable organization. Obtain Publication 1771, *Charitable Contributions – Substantiation and Disclosure Requirements*, Publication 557, *Tax-Exempt Status for Your Organization*, and Publication 526, *Charitable Contributions*, for additional information.

### **Certain Gaming Winnings**

FORM W-2G – *Certain Gambling Winnings*. Certain wagering/gaming transactions require the filing of Form W-2G and Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*. The Form W-2G is filed when an individual wins a prize with a minimum specific dollar amount at a gaming event. The winner must provide the game operator with proper identification including his/her Social Security number. Obtain Publication 3079, *Gaming Publication for Tax-Exempt Organizations*, for additional information regarding filing requirements of tax-exempt organizations conducting gaming.



## DEFINITIONS

**IRC 501(c)(4)** provides, in part, for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. No part of the net earnings of such entity may inure to the benefit of any private shareholder or individual.

**IRC 501(c)(7)** provides for the exemption from federal income tax of clubs organized for pleasure, recreation and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

**IRC 501(c)(8)** provides for the exemption from federal income tax of fraternal beneficiary societies, orders or associations operating under the lodge system and providing for the payment of life, sick, accident or other benefits to the members and their dependents.

**IRC 501(c)(10)** provides for the exemption from federal income tax of domestic fraternal societies, orders or associations, operating under the lodge system, the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational and fraternal purposes, and which do not provide for the payment of life, sick, accident or other benefits.

**IRC 501(c)(19)** provides for the exemption from federal income tax of a post or organization of past or present members of the Armed Forces of the United States, an auxiliary unit or society of, or a trust or foundation for any such post or organization meeting specific organizational requirements as stated in the Code.

**IRC 501(c)(23)** provides for the exemption of any association organized before 1880, more than 75% of the members of which are present or past members of the Armed Forces, and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents. The Army and Navy Mutual Aid Societies are the only organizations known to qualify under this section.

**Auxiliary units or societies** are corporations or associations formed to support the purposes and activities of a post or organization composed of veteran members. IRC 501(c)(19) provides for the exemption of auxiliary units composed of spouses of members of a 501(c)(19) organization, or persons related to a member of such an organization within two degrees of consanguinity.

A **“bona fide guest”** is an individual invited to participate in an activity, accompanied by a member, and for whom all expenses are paid by the member. Whether an individual is a bona fide guest or a member of the general public is important for determining the source of income for 501(c)(7) exempt status and for determining amounts of UBIT for 501(c)(7), 501(c)(8), 501(c)(10), and 501(c)(19) organizations.

A **“member”** for purposes of IRC 501(c)(19) is an individual who is eligible for membership as described in the constitution and bylaws of the veterans’ organization. The organizing document of the veterans’ organization usually limits membership to past or present members of the United States Armed Forces when the post is controlled by a central organization in a group exemption. A member of the veterans’ organization is entitled to attend membership meetings, to vote at such meetings, to hold office or to participate in national and state conventions. Lastly, the post also remits a per-capita tax to the central organization for membership dues.

A **“nonmember.”** For purposes of IRC 501(c)(19), a “nonmember” is an individual who is not a member of the organization but who participates in recreational activities sponsored by the organization or receives goods or services from the organization and pays for the services or goods received. This is a term that describes the social nonmember of the post. A nonmember of the veterans’ organization is **not** entitled to attend membership meetings, to vote at such meetings, to hold office or to participate in national and state conventions. The post does not remit a per-capita tax to the central



organization for their social nonmember dues. A social nonmember is generally considered a member of the general public and a nonmember for section 501(c)(19) purposes unless the membership category is established in the constitution of the central organization or post's creating document.

*A war veteran* is a person who served in the Armed Forces of the United States during the following periods:

- a. April 21, 1898, through July 4, 1902;
- b. April 6, 1917, through November 11, 1918;
- c. December 7, 1941, through December 31, 1946;
- d. June 27, 1950, through January 31, 1955;
- e. February 28, 1961, through May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;
- f. August 5, 1964, through May 7, 1975, and
- g. August 2, 1990, and will end on the date prescribed by Presidential Proclamation or by law.

## RELATED PUBLICATIONS

*The Internal Revenue Service provides other publications and annual reporting instructions that cover specific aspects relating to topics discussed herein.*

- Publication 15 . . . . Employer’s Tax Guide (Circular E)
- Publication 15A . . . . Employer’s Supplemental Tax Guide
- Publication 510 . . . . Excise Taxes
- Publication 515 . . . . Withholding of Tax on Nonresident Aliens and Foreign Corporations
- Publication 526 . . . . Charitable Contributions
- Publication 531 . . . . Reporting Tip Income
- Publication 535 . . . . Business Expenses
- Publication 557 . . . . Tax-Exempt Status for Your Organization
- Publication 578 . . . . Tax Information on Private Foundations and Foundation Managers
- Publication 598 . . . . Tax on Unrelated Business Income of Exempt Organizations
- Publication 1391 . . . . Deductibility of Payments Made to Charities Conducting Fund-Raising Events
- Publication 1771 . . . . Charitable Contributions - Substantiation & Disclosure Requirements
- Publication 3079 . . . . Gaming Publication for Tax-Exempt Organizations
- Instructions for Forms 1099, 1098, 5498 and W-2G, *Reporting Requirements*

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## REQUEST FOR COMMENTS

*To assist the Internal Revenue Service in its goal of providing current and effective information, we are soliciting comments and suggestions on this publication. Please indicate any changes you would recommend as well as suggestions for additions. Please send your comments to:*

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