



FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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NEWS FROM THE INTERNAL REVENUE SERVICE

Anyone who has been reading this publication in recent years is well aware of the fact that tax-exempt organizations – including veterans organizations – are subject to extensive regulation and scrutiny by the IRS. Every so often, the agency appears to focus special attention on veterans groups. This is one of those times.

In 2016, the IRS has made a few announcements that have the potential to impact DAV chapters and departments. This issue of the *Nonprofit Advisor* highlights two of those.

NEW FOCUS ON CHARITABLE GAMING

The IRS has updated its publication (Publication 3079) on gaming/gambling activities by charitable organizations. The publication provides a detailed analysis of the “do’s and don’ts” in the area for various types of exempt organizations. Note that the section pertaining to 501(c)(4) organizations governs the activities of nearly all departments and chapters. The section on “veterans organizations” applies to 501(c)(19) organizations only and should not be used as a guide.

In brief, Publication 3079 notes that Section 501(c)(4) organizations enjoy tax exemption because they promote social welfare. Gambling is deemed by the IRS

to be a business and a recreational activity; it does not ordinarily promote social welfare. For example, Rev. Rul. 66-150 holds that a 501(c)(4) organization whose primary activity is to operate a social facility (including a bar, restaurant, and game room) is not exempt. Therefore, a section 501(c)(4) organization whose primary activity is gaming may lose its exempt status.

A social welfare organization having a primary purpose other than gaming will not ordinarily jeopardize its tax-exempt status by conducting gaming, but its gaming income may be subject to the tax on unrelated business income. **The fact that the income from gaming is intended to be used to support veterans programs does NOT exempt such income from taxation.**

501(C)(4) ORGANIZATION REGISTRATION REQUIREMENT

The IRS has published interim regulations that apply to all newly-formed (and some previously existing) DAV departments and – more probably – chapters. These requirements impact all 501(c)(4) social welfare organizations formed after July 8, 2016 and a small minority of 501(c)(4) organizations formed before that date. The requirement involves the filing of Form 8976 with the IRS. This is an online filing. It may not be done by mail.



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It is important to note that current or intended membership in the DAV group tax exemption DOES NOT obviate the need for chapters/departments to comply with these new requirements. Just as departments and chapters must comply with the requirement for filing one of the “990” family of documents on an annual basis, this one-time filing applies irrespective of group exemption status.

New 501(c)(4) organizations formed *after* July 8, 2016 must submit Form 8976 to the IRS within 60 days after they are organized. For organizations formed as corporations, the filing clock starts ticking when the organization’s articles of incorporation are approved by

a state official. For unincorporated associations, the organization is formed when its governing principles are adopted by directors or members.

A 501(c)(4) organization formed *any time prior* to July 8, 2016 need not file Form 8976 if at least ONE of the following is true: (1) the organization has filed at least one Form 990 Annual Information Return; OR (2) the organization has applied for recognition of 501(c)(4) status with the IRS by filing form 1024. Organizations that have done neither should attend to the 8976 immediately. For more information, see <https://www.irs.gov/pub/irs-drop/rp-16-41.pdf>.

Nonprofit Advisor is prepared by the Office of the DAV’s General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.