NONPROFIT ADVISOR

For DAV Departments and Chapters

Volume 3, No. 1 **UNTANGLING THE 501(c) MYSTERY – PART TWO** **Winter 2011**

In the last issue of the newsletter, we discussed the requirements for, and differences between, tax-exemption under two different subsections of the Internal Revenue Code, namely 501(c)(3) and 501(c)(4). In this issue, we will treat some other possible types of exemption available to veterans organizations, especially under 501(c)(19).

What is 501(c)(19) anyway?

501(c)(19) is a subsection of the Internal Revenue Code that specifically provides a tax exemption to "veterans organizations." On its face, it would appear that all veteran organizations would logically seek exemption under that subsection. Appearances, however, can be deceiving!

Why is DAV not exempt under 501(c)(19)?

The DAV national organization is tax-exempt under Section 501(c)(4) of the Internal Revenue Code. Section 501(c)(4) pertains to "social welfare organizations." There are two reasons why DAV is not exempt under Section 501(c)(19). One of the reasons is historical. The other is substantive.

What is the historical reason?

The historical reason that DAV is not exempt under Section 501(c)(19) is that DAV, as an organization, predates the creation of Section 501(c)(19) by a half century. Section 501(c)(19) was not added to the Internal Revenue Code until the early 1970's, long after DAV had been federally chartered and granted its individual and group tax exemptions.

What is the substantive reason?

The substantive reason that DAV is not a 501(c)(19) requires a bit more explanation and analysis. Certainly, if DAV sought to change the basis for its tax exemption from 501(c)(4) to 501(c)(19), it would have no difficulty whatever in so doing. However, some of the "advantages" of 501(c)(19) status simply have no appeal for DAV.

1. A 501(c)(19) organization need not be composed entirely of veterans. In fact, a 501(c)(19) organization can have up to 25% of non-veteran members. Clearly, this provides no advantage to DAV. Our membership is composed entirely of wartime, service-connected disabled veterans. In fact, DAV's federal charter is virtually unique in that the organization is not even permitted to have honorary members. Membership in DAV requires an exclusive credential, so the liberal rules of 501(c)(19) offer no advantage to DAV. In fact, when originally created, the section 501(c)(19) designation required that 75% of the membership be **war veterans.** When that membership requirement proved too difficult for organizations to meet, the standard was later watered down, in 1982, to make it easier for such organizations to pass muster.

2. Section 501(c)(19) was created, in part, to broaden the permissible exempt activities available to veterans organizations. For example, it is part of the exempt purpose of a 501(c)(19) organization to provide recreational activities to its membership. What that means, in practice, is that a 501(c)(19) organization could devote all of its resources to running a bar for its members and still be eligible for tax-exemption! Furthermore, a 501(c)(19) can operate as a veterans organization even if 25% of its members are non-veterans.

Are there any good reasons why a chapter or department should consider converting to 501(c)(19) status?

There may be, but so far none has emerged. If a chapter or department wished to pursue such a status, it would need to file a separate application for tax exemption from the Internal Revenue Service, since the law provides that all subordinate members of a group exemption must be exempt under the same section of the tax code. This application process is long and costly and carries no guarantee of a successful outcome. Even if successful, the applying department or chapter would no longer be part of the DAV group exemption.

Several years ago, a state law provided a local tax benefit to veterans organizations, but limited the benefit to 501(c)(19) entities. Some DAV chapters in the affected state considered making the switch but, upon examination, decided that the loss of the group exemption would be far worse than any incidental benefit from the law in question.

If a DAV chapter is heavily engaged in bar/lounge activities or other recreational pursuits, would it not be safer for it to seek exemption under Section 501(c)(19), since that section permits such pursuits?

From a tax compliance standpoint, 501(c)(19) would be the way for such a chapter to go. However, that is not the end of the matter. Neither DAV's charter nor its Mission Statement ("Statement") envision recreation as being a major focus of DAV's attention. The Statement, restated in NEC Regulation 10, gives clear guidance to the National Organization and to subordinate units about what the organization's purposes are. A subordinate unit with a different focus may well be doing good or useful things, but it is not furthering the purposes of DAV. DAV is about ***service to veterans, their dependents and survivors***, nothing more and nothing less. That is why most DAV entities, including the National Organization, must report in some way, each year, on the nature of its service activities. An entity that is not engaged primarily in service to veterans is not maintaining fidelity to the mission DAV assumed nearly a century ago.

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.

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