

Review your Ladies Auxiliary!

by Bradley M. Pinsky

Fire departments should review the Ladies Auxiliary or similar entity associated with the department. It is important that the auxiliary be incorporated, tax exempt, exempt from paying sales tax and has insurance.

Determine whether the auxiliary is incorporated, tax exempt and insured

This is both important and easy to do. Go to "Links" on this website, and then go to the Department of State site. Type in the name of the auxiliary, or even part of the name to be sure you find it. Remember to check the "contains" box to search for part of the name. Did the name appear?

If the auxiliary is incorporated, next check to make sure that the entity is tax exempt. Again, go to the "Links" page, and then go to the "IRS" link. Again, type in the name or partial name of the entity. To be sure your search is complete, just type in the city/town and state, and not the entity name, and you will see a list of all of the tax exempt entities in that city/town.

If the corporation is tax exempt, then the final consideration is whether the corporation is covered by insurance. Make sure the corporation is insured, or that the departments insurance names the auxiliary as an "additional assured". If the auxiliary is sponsoring social events, then prudence dictates that the auxiliary have insurance to cover losses and provide for attorneys fees to defend lawsuits. An additional insured will be named in the first few pages of the department's insurance in the list of those insured.

If the auxiliary is not incorporated

If the auxiliary is not incorporated, then either the auxiliary should be a committee of the department, or the auxiliary members must incorporate to protect themselves.

Persons who are members, directors and officers of the auxiliary may be sued personally for injuries unless they are protected by a corporation. That corporation may be either the fire department or a separate corporation. Corporations provide persons with protection from most liability.

If the auxiliary is part of the fire department, then it should be a committee of the department. However, the auxiliary must then report its finances as part of the fire department's tax returns, must be included in the required year end financial report (see our article on this topic), and must yield to the wishes of the board of directors.

If the auxiliary is not tax exempt

If the auxiliary operates as part of the fire department, then it may use the tax exempt status of the corporation (you should check the "Links" page to make sure the fire department is actually tax exempt.) If the auxiliary is a separate corporation, then it must have its own tax exempt status. If it is not tax exempt, it must apply. Note that the auxiliary, as a separate corporate entity, must file tax forms (Form 990's). It must also provide annual reports (see related article on this topic).

If the auxiliary operates without tax exempt status, and it is conducting fund raising activities, it must pay taxes on the income. Think of it this way: All money made by the corporation is profit. Corporations must pay taxes on the profit unless tax exempt. Additionally, persons who donate may be claiming their donations to the auxiliary as a charitable deduction. If the auxiliary is claiming to be a charity, and it is not, it is committing a crime.

The corporation should also obtain sales tax exemption. Sales tax exemption is not the same as federal tax exempt status. New York State permits corporations with a sales tax exemption to avoid paying sales tax on purchases. A sales tax exempt number begins with "EX-". Make sure the number is not the same as the fire department's number if the corporation is a separate entity.

Conclusion

The auxiliary should exist one of two ways. Either it is a committee of the fire department or it is a separate corporate entity. If it is a committee of the department, it must report to the department, but it can use the departments tax exempt status, sales tax exemption number, and insurance.

If the auxiliary is not incorporated, incorporate now or risk losing personal assets to a plaintiff in a lawsuit. If the auxiliary is incorporated, make sure it has tax exempt status. If it has tax exempt status, make sure it has its own sales tax exempt number and that it has insurance.

Scicchitano & Pinsky can assist the auxiliary with incorporating, obtaining tax exempt status and obtaining sales tax exemption. We can also provide advice regarding filing tax returns and with structuring the auxiliary in a way that meets people's needs.

Do not take chances and do not ignore the auxiliary.