INCORPORATION OF ALA CHAPTERS, TAX-EXEMPTION AND TAX RETURNS

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Advantages of Incorporation

The substantial advantage of incorporating an ALA chapter is to shield its members from potential liability. If the chapter is not incorporated, each of its members may be individually liable for the obligations of the chapter. By incorporating, only the assets of the chapter can be reached to fulfill legal obligations; the members' personal assets are protected.

Steps Required to Incorporate

Incorporation is usually completed under the not for profit corporation laws of the state where the chapter is located. (See notes 1, 2 and 3 at the end of this article.) Articles of incorporation or a certificate of incorporation are to be completed and filed with the Secretary of State. A filing fee is required. Following filing and acceptance of the articles of incorporation or certificate of incorporation, bylaws must be adopted. They set forth the basic rules governing the management of the corporation. ALA has prepared model bylaws and recommends their adoption by each incorporated chapter. Chapters wishing to modify the bylaws slightly to conform to their own situation may do so; however, the proposed bylaws will not be approved by the ALA board unless the criteria for membership, including the requirement that all members of the chapter must be members of the Association of Legal Administrators, is adopted as stated in the Model Chapter Bylaws. Finally, an organizational meeting of the members should be held to elect the directors and officers.

Tax Exempt Status

A chapter must qualify for tax exempt status under the Internal Revenue Code regardless of whether the chapter is incorporated. Although provisions of the Code do not specifically require that a trade association such as an ALA chapter obtain a determination from the Internal Revenue Service that it is tax exempt, regulations adopted by the Treasury Department state clearly that a trade association is not exempt from tax merely because it is not organized and operated for profit. To establish exemption, an application, using IRS Package 1024, must be filed with the IRS. (See Note 3 at the end of this article for the link.)

Tax Return Requirements

<u>All U.S. chapters must file a federal tax return</u>. The question of what federal tax form an ALA chapter must file is affected by both (A) whether it has obtained federal tax exempt status, and (B) its total gross receipts for the taxable year. Until such time as a chapter has applied for and been actually granted federal tax-exempt status, it is a taxable entity which is required to file federal tax returns. Associations, including chapters that are not recognized as tax exempt, are required to file returns even if they have no taxable income.

If a chapter's federal tax exempt status has been recognized, the question of which form it must file is determined by its normal gross receipts. If the ALA chapter’s normal annual gross receipts do not exceed $50,000, it is only required to file an annual electronic information return on Form 990-N, which is described below. If its annual gross receipts normally exceed $50,000, it is required to file a regular tax return on either Form 990 or Form 990-EZ. (See Note 3 at the end of this legal article for the link.)

The applicable regulations define "gross receipts" as the gross amounts received by the organization during its annual accounting period (including a short year) from all sources, without reduction for any costs or expenses. The sources of gross receipts include (1) contributions, (2) dues or assessments, (3) sales or receipts from business activities, (4) receipts from the sale of assets, and (5) gross amounts received as investment income - such as dividends, interests, rents and royalties.

The collection of certain types of chapter meeting expenses on behalf of attendees may not fit squarely within any of the five types of receipts/income noted above. One example of this situation might be the collection of luncheon expenses or costs which are then immediately dispersed to the hotel or restaurant at which the meeting takes place. In this instance, the chapter is acting as the members' agent to pay an expense on behalf of those members and its activity in collecting the funds in advance is a matter of member convenience. However, the Internal Revenue Service might contend that these amounts are chapter receipts. This may be particularly so if the amounts are collected well in advance and are non-refundable. One recommendation is that if the chapter will be collecting amounts and disbursing them on behalf of its members, it should consider establishing a separate account for these funds so that these member collections are not commingled with chapter funds.

Unusual types of receipts and particular accounting practices may affect the determination of gross receipts, and, consequently, the need for a tax exempt organization to file a tax return. In such cases, the chapter should seek competent legal advice. The chapter should also be aware of state and local tax requirements, particularly in jurisdictions having a sales tax or in jurisdictions imposing a Business & Occupations (B & O) tax. The applicability of these taxes, if any, may depend upon a chapter's particular activities, its' federal tax status, whether it has been incorporated as a profit or not-for-profit corporation, and other factors. In the case of any doubt on these issues, competent local legal advice should be sought and obtained.

Effective for taxable years beginning with the 2010 tax year, even if an ALA chapter’s annual gross receipts normally do not exceed $50,000, it must file an electronic Form 990-N, “Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or 990-EZ.” There will be no fee charged for filing this electronic form. This form will require the legal name and address of the ALA chapter, any other names it uses, its federal identification number, the name and address of a principal officer, and a statement confirming that its annual gross receipts are normally $50,000 or less.

NOTES:

1. Some states require annual renewal to retain incorporation.

2. Chapters in Canada may request a publication titled Canada Corporations Act: Information Kit on the Creation of Nonprofit Corporations from Industry Canada. Visit their web site at *http://strategis.ic.gc.ca*. There is a new Canada Nor-For-Profit Corporation Act requiring all corporations incorporated under the old legislation to transition to the new Act by October 17, 2014.

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3. One resource for the current form and additional information is the IRS at: http://www.irs.gov/Forms-&-Pubs