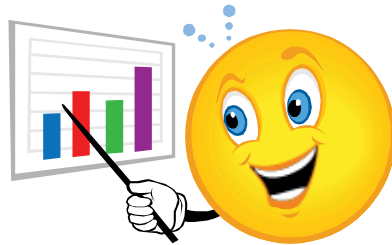


Protecting the Non Profit Status and Avoiding Personal Liability



Prepared by:
Kristy Spires
Grand Aerie Comptroller/CFO
Revised February 2010

Whose Business is it Anyway?

- At all levels of the Fraternal Order of Eagles, business is being transacted
- There is liability to Officers at every level to manage the business aspects of the fraternal activity in a legal and ethical manner
- Not complying with regulations and law could place you, the officer, in *personal* financial jeopardy

Structure of the Legal Entity

- What is a Determination Letter?
- What is a Group Exemption?
- What is the difference between 501(c) 3 & 8
- Why do we need to Incorporate?
- Why do we need to report through our Aerie rather than establish a separate legal entity?

Determination Letters and Group Exemption

- When an entity requests a non-profit tax status from the IRS, the IRS issues a letter stating what type of non-profit entity they have “determined” the entity to be. This “Determination Letter” is the verification (or proof) to the world that an entity is non-profit.
- A Group Exemption is issued to a master entity in order to allow chapters of the master entity to utilize the non-profit exemption of the master entity without filing additional paperwork with the IRS.
- The IRS will approve a Group Exemption as part of the determination letter.

What do you mean we're not charitable?

- There are many different non-profit statuses. Today we are only going to deal with 501(c)3 and 501(c)8 statuses.
- Entities ruled as 501(c)3 are CHARITABLE and Non-Profit and tax exempt
- Entities ruled as 501(c)8 are Non-Profit but are not charitable and are tax exempt for Federal and State taxes, but not necessarily sales and use taxes.
- Neither are exempt from Payroll taxes!

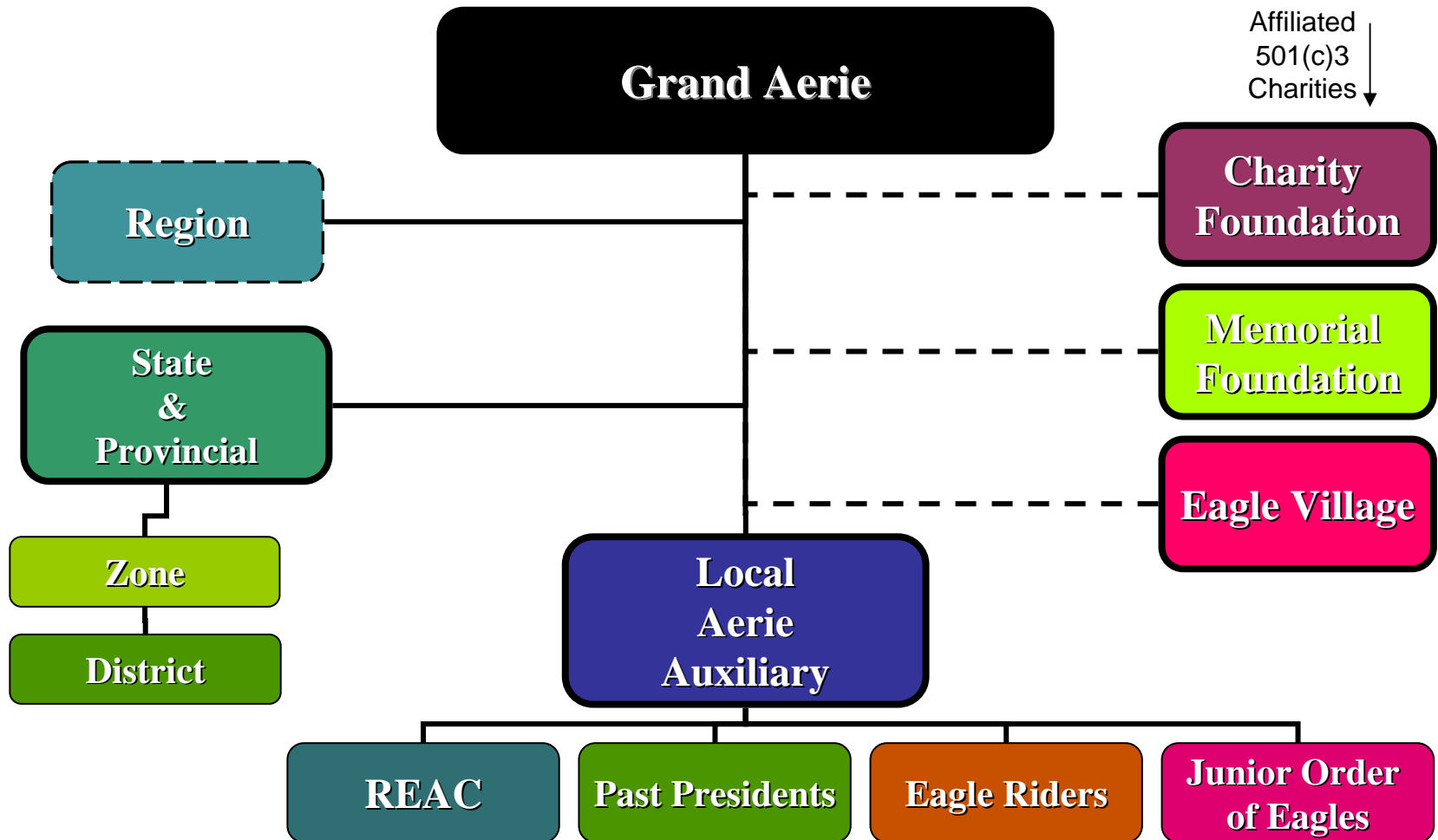
Grand Aerie and Subordinates

- The Grand Aerie and all subordinate entities are 501(c)8 status.
- The Grand Aerie filed for the determination and Group Exemption. The Group Exemption number is 0102.
- All States and Local Aeries and Auxiliaries should be utilizing the Grand Aerie determination and Group Exemption when filing returns, etc.
- Depending on the state, there MAY be some sales tax exemptions for subordinates. For example, the State of Florida provides tax relief on liquor sales to 501(c)8 entities.
- *State and Local Aerie and Auxiliaries and NOW Districts, Zones, Regions and any other permitted units are protected under the Grand Aerie Group Exemption. Clubs within Clubs ARE NOT protected individually. (more later)*

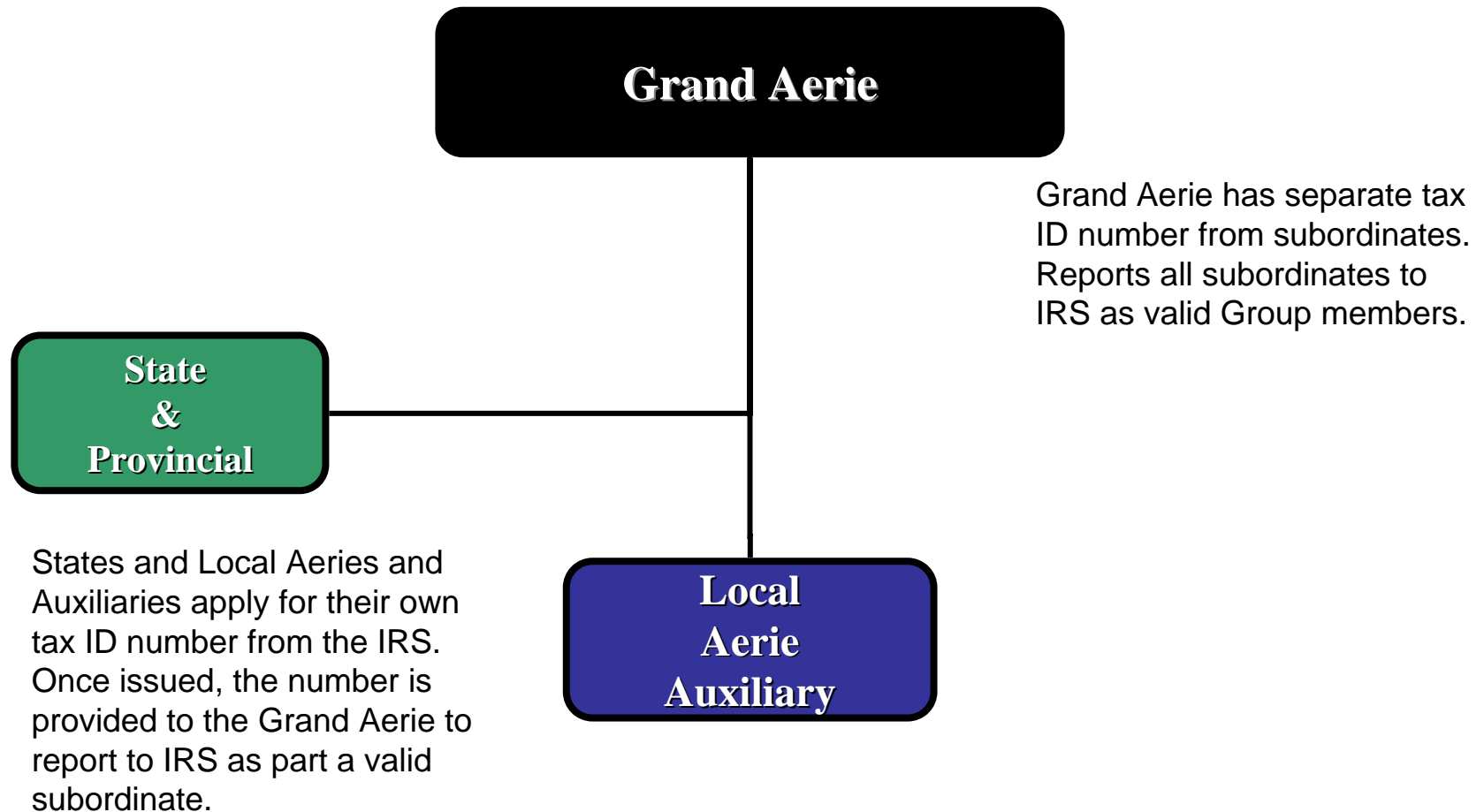
Charities

- There are three legal entities under the purview of the Grand Aerie that have been ruled 501(c)3 by the IRS.
 - **The FOE Charity Foundation**
 - **Eagles Memorial Foundation**
 - **Eagle Village**
- These are the charities permitted to accept donations which have the IRS ruling which allows a donor to take a tax exemption for the donation.
- In nearly all cases, donations made payable to a local Aerie are NOT tax deductible.

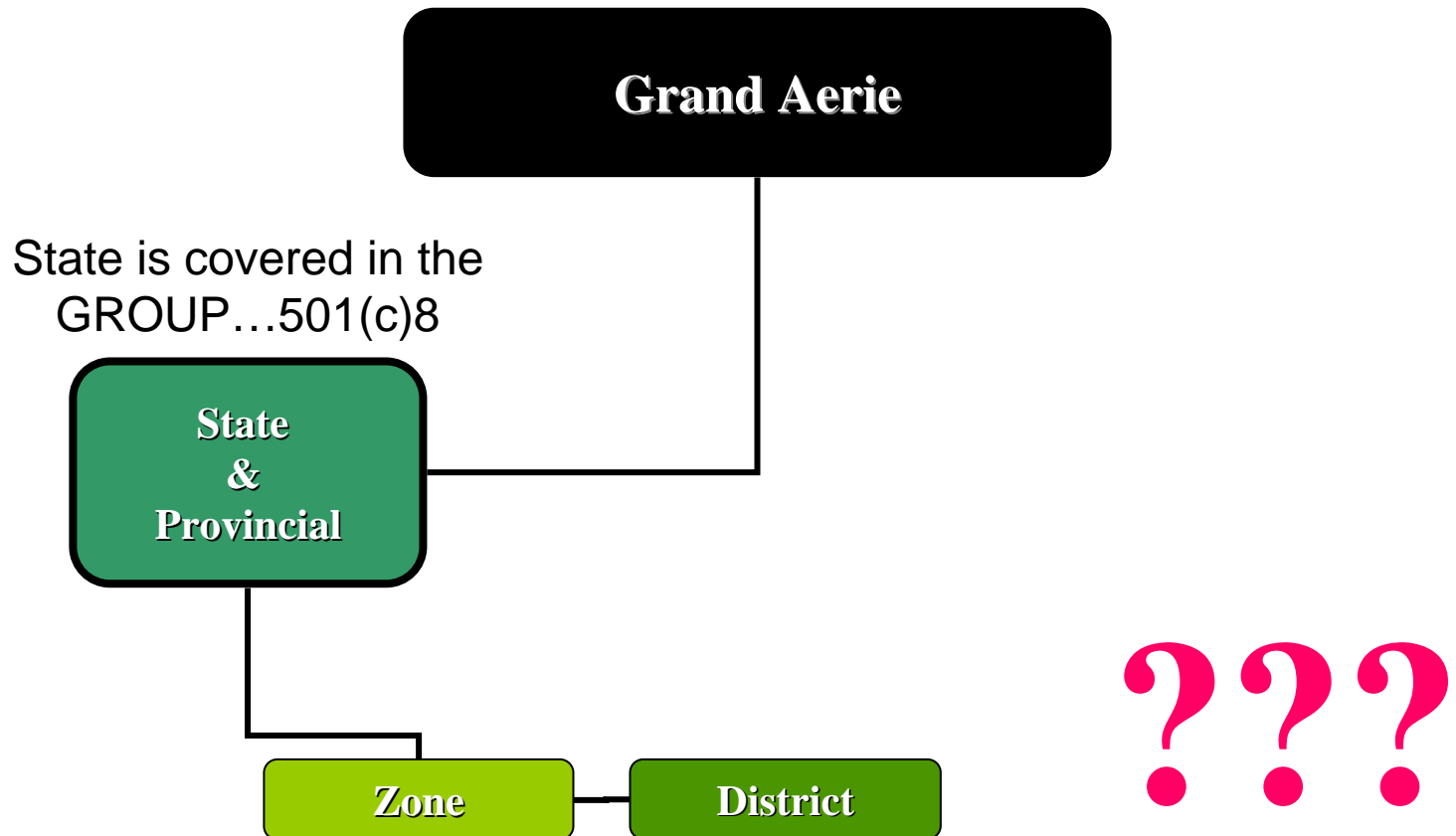
Fraternal Order of Eagles and Charitable Funds



Fraternal Order of Eagles 501(c)8



Fraternal Order of Eagles and Charitable Funds



Zones and Districts have recently been addressed with amended and restated Articles of Incorporation accepted in February 2010 and are now part of the of the Grand Aerie determination/Group Exemption.

Fraternal Order of Eagles and Charitable Funds

Grand Aerie

Local Aeries and Auxiliaries are covered under Grand Aerie Group Exemption.

All “Clubs within the Club” are required to use the local Aerie tax ID number and report all financial transaction to the Aerie for inclusion in the Aerie’s financial reporting.

*These units do not have our non-profit protection if they get their own Tax ID number and run as an independent legal entity.****

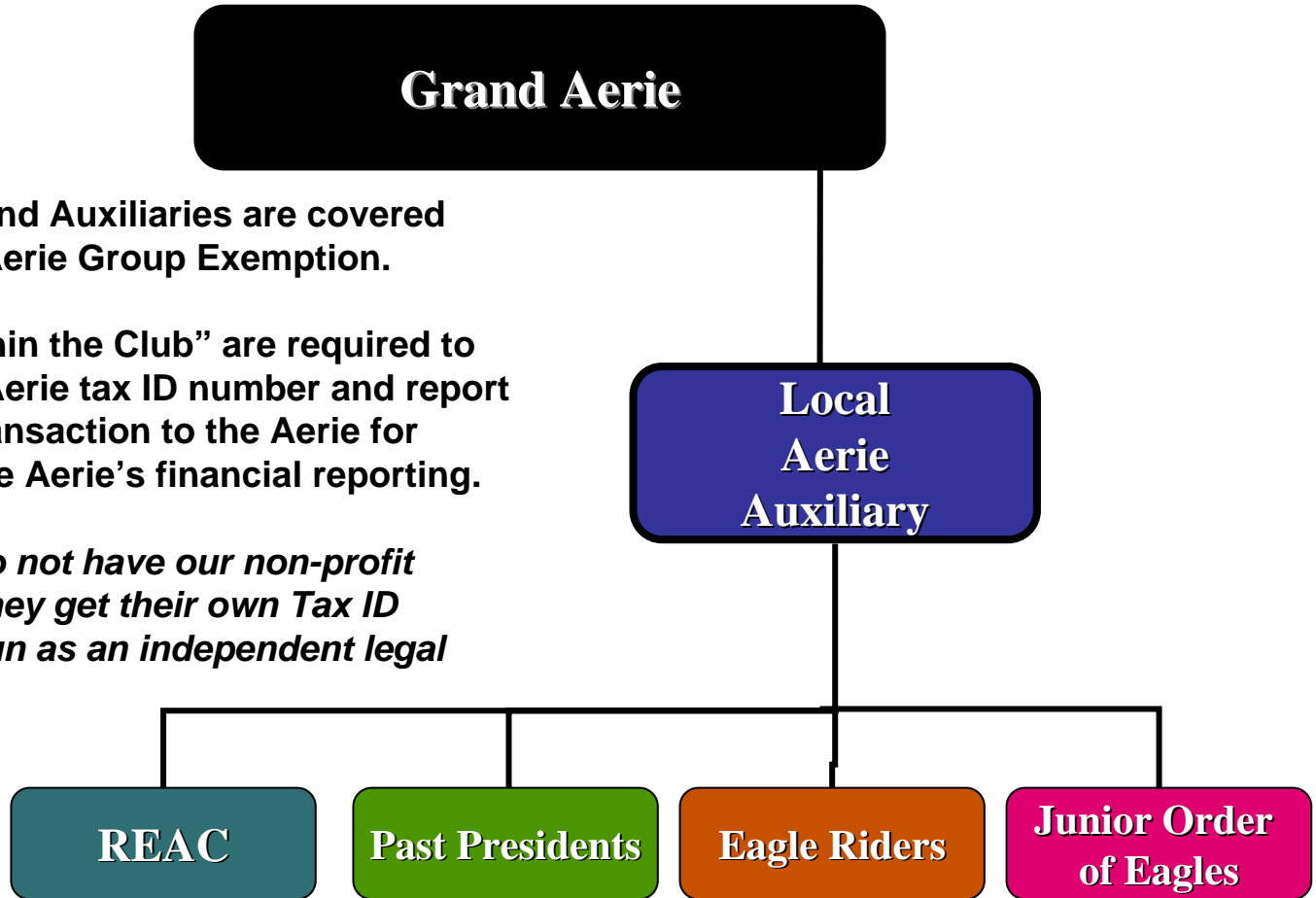
Local Aerie Auxiliary

REAC

Past Presidents

Eagle Riders

Junior Order of Eagles

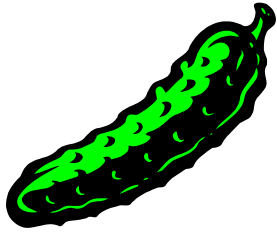


“Rogue” units may end up revoked by the IRS due to not being non profit entities

- For a variety of reasons, some units, which should have been established as a “club within a club” applied for and received their own tax ID number and assumed they were part of the Grand Aerie group exemption.
- Several District level Eagle Rider groups were established in the early stages due to confusion and lack of proper direction by the Grand Aerie. These units have been operating and raising charity dollars. The BOGT voted to grandfather these units into the Group Exemption to protect their tax exempt status. Any of these units established prior to 2009 must submit bylaws to the Grand Aerie and be added to the IRS listing of subordinate groups by the GA Office.
- If any subordinate group has their own tax id number and has been filing separate from their Aerie, please notify the Grand Aerie Bylaws department to determine if the unit can be added to the group exemption or if they are unprotected.

How to Avoid Trouble

- Verify legal structure is proper.
 - Aerie has IRS issued Tax ID number and Grand Aerie has local Aerie on IRS Group listing
 - Aerie is incorporated within the State
 - Verify all “Clubs within Club” have NOT been doing business as separate legal entity
- Review Bylaws and make any adjustments to properly set up Eagle Riders, REAC, etc.
 - Provide in bylaws the signing authority and access over the “Clubs within Club” checking accounts and investments.
 - For example, specify in an Eagle Rider group that the Eagle Rider officers have full access and control over their monies and their monies can only revert to the Aerie in the case of proper dissolution of the Eagle Rider group.
- Provide officer training or encourage officers to have expertise in their position’s responsibilities



Avoiding Trouble or



Keep me out of this pickle!

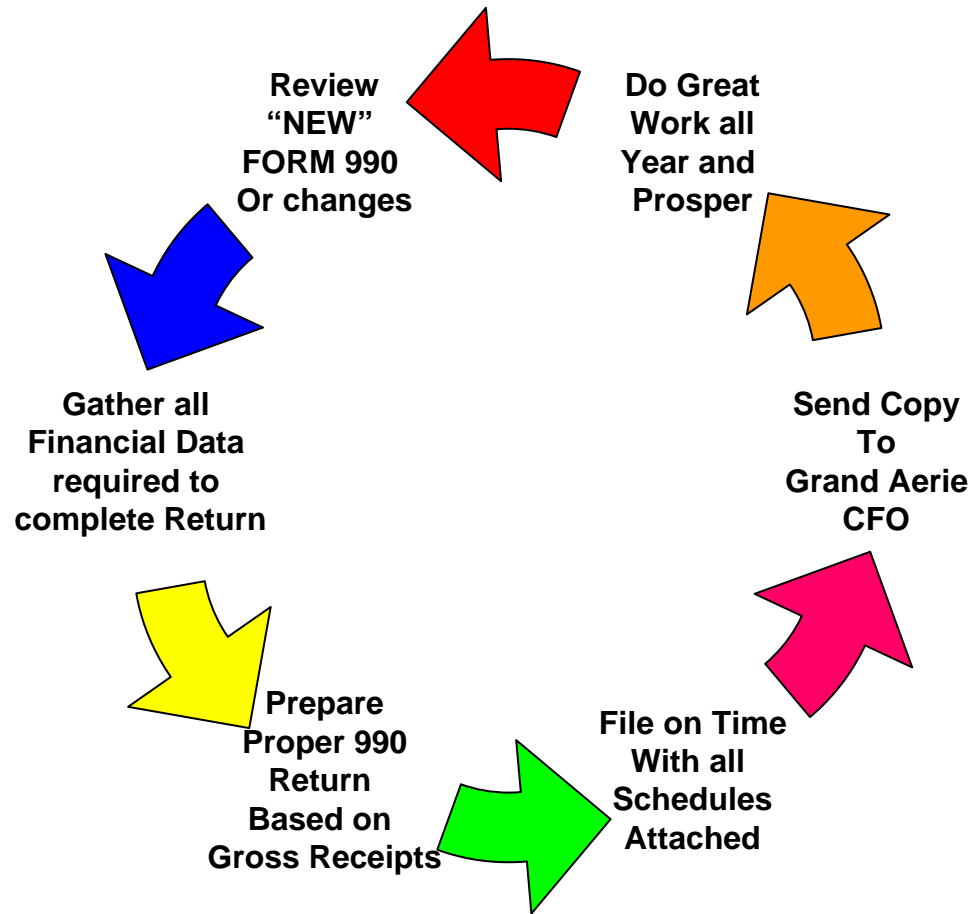
- Know the Reporting requirements at all levels: Federal, State, Gaming Commissions, Liquor Boards, etc.
- Know the personal liability consequences if you are unincorporated.
- Whether you are incorporated or not, officers are *personally* liable for failure to report wages and pay payroll taxes.
 - We have many examples of officer wages being garnished and IRS recovery of unpaid payroll taxes through personal asset seizure (including officer's homes!)
 - There is not a statute of limitation on the collection of unpaid payroll taxes. Long after an officer has resigned a position, they can be lawfully sued by the government.

If you haven't been doing it, you are not wearing the cloak of invisibility.

Avoid exposure to the D.R.A.F.T.

- Whether it is IRS 990's, State registrations or properly reporting gaming income or unrelated business income, sooner or later, someone is going to come knocking.
- It is not advisable to “roll the dice” and hope it will be after your tenure as an officer. In many instances, the regulator will go back to the members in office at the time of the non-compliance.
- **“They” will...**
 - *Discover the non compliance*
 - *Request every record the prior Secretary took with him*
 - *Audit the records*
 - *Fine all responsible parties and*
 - *Take what is owed*


Adventures in 990 Land



IMPORTANT NOTICE

- Non exempt entities, in our case, Aeries or Auxiliaries (at all levels) **WILL LOSE TAX EXEMPT STATUS** if a 990 return has not been filed in three years. October 15, 2010 is final opportunity to become compliant!
- This law change was part of the Pension Protection Act of 2006, with an effective date of November 15, 2007 and is applicable to tax years beginning after December 31, 2006.
- What does this mean??? Will no longer be Aerie or Auxiliary as a non-profit.

FORM 990 FILING REQUIREMENTS

Fiscal Year	Tax Return Due Date OCTOBER 15	990N Postcard	990EZ	Long Form 990 + Schedules
June 1, 2007- May 31, 2008	10/15/08	Gross Receipts <\$25,000		Old Form 990 if Gross receipts \$25,000+
June 1, 2008- May 31, 2009	10/15/09	Gross Receipts <\$25,000	Gross receipts between \$25,000 and \$1,000,000	Gross Receipts >\$1,000,000 Net Assets >\$2.5 million
June 1, 2009- May 31, 2010	10/15/10 	Gross Receipts <\$25,000	Gross receipts between \$25,000 and \$500,000	Gross Receipts >\$500,000 Net Assets >\$1.25 million
June 1, 2010- May 31, 2011	10/15/11	Gross Receipts <\$50,000	Gross receipts between \$50,000 and \$200,000	Gross Receipts >\$200,000 Net Assets >\$500,000
June 1, 2011- May 31, 2012	10/15/12	Gross Receipts <\$50,000	Gross receipts between \$50,000 and \$200,000	Gross Receipts >\$200,000 Net Assets >\$500,000

Where are resources to help?

<http://www.irs.gov/charities/article/0,,id=187787,00.html>

The screenshot shows a Windows Internet Explorer browser window displaying the IRS website. The address bar shows the URL <http://www.irs.gov/charities/article/0,,id=187787,00.html>. The page header includes the IRS logo and the text "Internal Revenue Service United States Department of the Treasury". Navigation links include "Home", "Change Text Size", "Contact IRS", "About IRS", "Site Map", "Español", and "Help". A search bar is present with a "SEARCH" button. The main navigation menu includes "Individuals", "Businesses", "Charities & Non-Profits", "Government Entities", "Tax Professionals", "Retirement Plans Community", and "Tax Exempt Bond Community". Below this, there are links for "Charitable Orgs", "Churches and Religious Orgs", "Contributors", "Other Non-Profits", "Political Orgs", and "Private Foundations".

The main content area is titled "ABC's for Exempt Organizations" and contains the following text:

IRS Exempt Organizations offers the following resources to help the manager of a new exempt organization navigate tax issues. These materials are not comprehensive; for further assistance, consult a tax adviser.

- [Life Cycle of an Exempt Organization](#): Helpful information about points of intersection between tax-exempt organizations and the IRS, including access to explanatory information and forms that an organization may need to file with the IRS. Separate life cycle sites are provided for [public charities](#), [private foundations](#), [social welfare organizations](#), [labor organizations](#), [agricultural or horticultural organizations](#), and [business leagues \(trade associations\)](#).
- [Applying for Tax-Exempt Status](#) (brochure): Criteria and procedures for applying for 501(c)(3) tax-exempt status.
- [Compliance Guide for 501\(c\)\(3\) Public Charities](#) (brochure): Activities that may jeopardize a charity's exempt status, federal tax filings, recordkeeping, changes to be reported to the IRS, required public disclosures, and IRS resources. Separate guides are available for [private foundations](#).
- [Frequently Asked Questions About Tax-Exempt Organizations](#)
- [EO Forms and Publications](#): IRS forms, publications, and internal training materials relating to tax-exempt organizations.
- [Employment Taxes for Exempt Organizations](#): Links to information about employment taxes for tax-exempt organizations.
- [Schedule of Events](#): Workshops and conferences for exempt organizations.
- [On-Line Workshops and Mini-Courses](#): An on-line version of IRS workshop for small and mid-sized exempt organizations, and *mini-courses* on applying for exemption, foundation status, annual return preparation (Form 990), deductibility of contributions, and resources for exempt organizations.
- [Retirement Plan Information for Exempt Organizations](#): Information and resources for tax-exempt organizations interested in establishing retirement plans for employees.
- [Exempt Organizations Products and Services Navigator](#) (brochure): Resources for exempt organizations.
- [Annual Electronic Filing Requirement for Small Exempt Organizations - Form 990-N \(e-Postcard\)](#)

On the left side of the page, there are two sections of links:

Charities & Non-Profits Topics

- [Life Cycle](#)
- [Search for Charities](#)
- [Published Guidance](#)
- [EO Newsletter](#)
- [EO Tax Law Training](#)
- [Abusive Transactions](#)
- [Calendar of Events](#)
- [Exempt Organizations FAQs](#)
- [More Topics ...](#)

IRS Resources

- [Compliance & Enforcement](#)
- [Contact My Local Office](#)
- [e-file](#)
- [Forms and Publications](#)
- [Frequently Asked Questions](#)
- [Newsroom](#)
- [Taxpayer Advocate Service](#)
- [Where To File](#)

At the bottom right of the page, it says "Page Last Reviewed or Updated: December 23, 2008".

Frequently Asked Questions about Tax-Exempt Organizations

- [FAQs About Applying for Tax-Exemption](#)

Insights into the tax-exempt application process.

[FAQs about the Annual Reporting Requirements for Exempt Organizations](#)

Insights into the Service's annual reporting requirements.

[Form 990 Redesign For Tax Year 2008 \(Filed in 2009\) Frequently Asked Questions](#)

Frequently Asked Questions About the Draft Revised Form 990 (November 2008)

[FAQs about Operating as an Exempt Organization](#)

Insights into the operations of a tax-exempt organization.

[FAQs about Issues of Interest to the General Public about Exempt Organizations](#)

Insights into issues of interest to the general public relating to tax-exempt organizations.

[FAQs About the Exempt Organization Public Disclosure Requirements](#)

Insights into the rules which require tax-exempt organizations to disclose their exemption applications and annual returns.

[Frequently Asked Questions \(FAQs\) - e-File for Charities and Nonprofits](#)

Frequently Asked Questions (FAQs) - E-file for Charities and Nonprofits

[FAQs about Charitable Organizations Providing Disaster Relief](#)

Frequently asked questions about disaster relief provided by charitable organizations.

<http://www.irs.gov/charities/content/0,,id=96986,00.html>

FAQs about the Annual Reporting Requirements for Exempt Organizations

-
- [What are my filing responsibilities once I receive/apply for tax-exempt status?](#)
- [Are there any exceptions to the requirement to file Form 990?](#)
- [Are small tax-exempt organizations required to file an annual return?](#)
- [What happens if I fail to file an annual return or annual electronic notice?](#)
- [Do individual members of a group exemption ruling have to file separate Form 990 returns?](#)
- [What happens if my Form 990 is filed late?](#)
- [What happens if my Form 990 is incomplete?](#)
- [Can penalties for filing Form 990 late be abated?](#)
- [Where do I file my annual exempt organization return?](#)
- [Is personal identifying information provided on an exempt organization return subject to public disclosure?](#)

<http://www.irs.gov/charities/article/0,,id=96581,00.html>

What are my filing responsibilities once I receive/apply for my tax-exempt status?

- An organization that [normally](#) has \$25,000 or more in gross receipts and that is [required to file](#) an exempt organization information return must file either [Form 990](#), *Return of Organization Exempt from Income Tax*, or [Form 990-EZ](#), *Short Form Return of Organization Exempt from Income Tax*.
- See [Filing Phase-In](#) for more information about which return to file. The return is due on the 15th day of the 5th month after the end of the organization's fiscal year. (For example, the 2008 return of an organization whose fiscal year ends on May 31, 2009, would be October 15, 2009.)
- The due date may be extended for three months, without showing cause, by filing [Form 8868](#) before the due date; an additional three-month extension may be requested on Form 8868 if the organization shows reasonable cause why the return cannot be filed by the extended due date.

Are there any exceptions to the requirement to file Form 990?

- Organizations with gross receipts and assets [below certain thresh holds](#) at the end of their tax years may file Form [990-EZ](#), *Short Form Return of Organizations Exempt from Income Tax*.
- Finally, organizations whose annual gross receipts are normally less than \$25,000 are not required to file an annual return, but an [annual electronic notice](#) - e-Postcard - beginning in 2008.

What happens if I fail to file an annual return or annual electronic notice?

- For tax years beginning after December 31, 2006, if an organization is required to file an information return or annual electronic notice and fails to do so for three consecutive years, the organization will lose its tax-exempt status as of the filing due date of the third year.
- For the organization to have its tax-exempt status reinstated, it must apply (or reapply) for tax-exempt status and pay the appropriate user fee.
- The Grand Aerie is required to take the unit off its group exemption list with the IRS and **MAY NOT** reinstate the unit.

Do individual members of a group exemption ruling have to file separate Form 990 returns?

- The parent and subordinate organizations of each group exemption ruling must agree on their filing responsibilities.
- The parent (Grand Aerie) does not file a group return for its subordinate organizations, and those subordinate organizations must file their own returns.

What happens if my Form 990 is filed late?

- If an organization whose gross receipts are less than \$1,000,000 for its tax year files its Form 990 after the due date (including any extensions), and the organization doesn't have [reasonable cause](#) for filing late, the Internal Revenue Service will impose a penalty of \$20 per day for each day the return is late.
- The maximum penalty is \$10,000, or 5 percent of the organization's gross receipts, whichever is less.
- The penalty increases to \$100 per day, up to a maximum of \$50,000, for an organization whose gross receipts exceed \$1,000,000.

The IRS treats an incomplete return the same as a [return filed late](#) - the penalties are the same.

- For example, if an organization fails to attach a required schedule to its annual return - one of the most common errors in filing Forms 990, 990-EZ, and 990-PF - its return is considered incomplete and filing penalties may apply.

Can penalties for filing Form 990 late be abated?

- Failure to timely file the information return, absent reasonable cause, can give rise to a penalty under section 6652 of the Code.
- Generally, whether an organization qualifies for the reasonable cause exception to the penalty will be determined on a case-by-case basis taking into account all relevant facts and circumstances.
- The regulations provide that a request for abatement of penalties based on reasonable cause must be made in the form of a written statement, containing a declaration by the appropriate person that the statement is made under penalties of perjury, setting forth all the facts alleged as reasonable cause.
- When requesting abatement of penalties for reasonable cause, your letter should include supporting documentation and address the following items:
 - The reason the penalty was charged
 - Explain what prevented the organization from complying with law

Form 990-N (e-Postcard)

- **Annual Electronic Filing Requirement for Small Exempt Organizations** — Small tax-exempt organizations whose annual [gross receipts](#) are [normally \\$25,000 or less](#) may be required to electronically submit Form 990-N, also known as the e-Postcard, unless they choose to file a complete Form 990 or Form 990-EZ. The Pension Protection Act of 2006 added this filing requirement to ensure that the IRS and potential donors have current information about your organization.
- **Due Date of the e-Postcard**
 - The first e-Postcards are due in 2008 for tax years ending on or after December 31, 2007. The e-Postcard is due every year by the 15th day of the 5th month after the close of your [tax year](#). For example, if your tax year ended on December 31, 2007, the e-Postcard is due May 15, 2008.
 - **You cannot file the e-Postcard until after your tax year ends.**
- **How To File**
 - To file the e-Postcard access the filing site directly by typing or pasting the following address into your Internet browser: <http://epostcard.form990.org>.
 - When you access the system, you will leave the IRS site and file the e-Postcard with the IRS through our trusted partner, Urban Institute. The form must be completed and filed electronically. There is no paper form.

<http://www.irs.gov/charities/article/0,,id=169250,00.html>

- **Information You Will Need To File the e-Postcard**

- The e-Postcard is easy to complete. All you need is the following information about your organization.
 - (EIN), also known as a Taxpayer Identification Number (TIN)).
 - [Tax year](#)
 - [Legal name and mailing address](#)
 - [Any other names the organization uses](#)
 - [Name and address of a principal officer](#)
 - Web site address if the organization has one
 - Confirmation that the organization's annual [gross receipts](#) are [normally \\$25,000 or less](#)
 - If applicable, a statement that the organization has terminated or is terminating (going out of business)

- **Who Must File**

- Small tax-exempt organizations with gross receipts that are normally \$25,000 or less must file the e-Postcard.

- **The following organizations cannot file the e-Postcard but must file different forms instead:**

- Tax-exempt organizations with annual gross receipts that are normally greater than \$25,000 must file [Form 990](#) or [Form 990-EZ](#)

- **Late Filing or Failure To File the e-Postcard**

- If you do not file your e-Postcard on time, the IRS will send you a reminder notice but you will not be assessed a penalty for late filing the e-Postcard.

However, an organization that fails to file required e-Postcards (or information returns – Forms 990 or 990-EZ) for three consecutive years will automatically lose its tax-exempt status. The revocation of the organization's tax-exempt status will not take place until the filing due date of the third year.

OTHER CONSIDERATIONS

- UBIT
 - Otherwise lovingly know by IRS agents as “Unrelated Business Income Tax”
 - Why do they LOVE it? It provides REVENUE
 - And what does IRS stand for boys and girls??? Internal REVENUE Service
 - The IRS sole purpose in life is to find income for the federal government.
 - Okay, and to make the Tax Code as complicated as possible to keep Accounting nerds employed.

- Examples of UBIT generators:
 - Income derived from public accommodation
 - Guests generate taxable income to an Aerie when they make purchases
 - Rental of Space
 - Social Hall rental for non-member weddings, etc. COULD generate taxable income
 - Events open to the public
- There are many examples available in an on-line publication “*Veterans' Organizations Tax Guide*” that also pertain to fraternal orgs.
 - <http://www.irs.gov/pub/irs-pdf/p3386.pdf>

- Charitable Solicitation
 - Aeries are not charitable as defined by the IRS
 - Advertising an event and stating that donations are “Tax Deductible” can lead to legal complications for an Aerie/Auxiliary
- Proper Recordkeeping
 - Ensure the Aerie has proper custody of all required records for proper backup when reporting to any regulatory agency
 - Make sure computers and backup up properly to protect data
 - Hire an accountant to provide expert help. The cost of help is far less than the cost of litigation
 - Financial paperwork and payroll records have specific retention timeframes. Don’t throw it away just because the year is over.
- Use your Auditor!!!
 - This appointment is one of the most critical in the organization to protect your assets and uncover fraud.

