



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.76.26

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PURPOSE

- (1) This is a complete revision and table of contents of IRM 4.76.26, Veterans Organizations dated July 1, 2005. This manual provides both technical guidance and examination procedures for auditing veterans' organizations, exempt under IRC §§501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), and 501(c)(19).

MATERIAL CHANGES

- (1) IRM 4.76.26.4, Membership Requirements, has been revised to reflect modification of the IRC 501(c)(19) membership requirements to include ancestors and lineal descendants as provided by Section 105 of the Military Family Tax Relief Act of 2003.
- (2) Editorial changes have been made throughout the IRM.
- (3) IRM 4.76.26 has been changed in its entirety. This manual now incorporates tax law, historical technical information, and expanded examination procedures unique to veterans' organizations.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 4.76.26, Veterans Organizations dated July 1, 2005.

AUDIENCE

The Tax Exempt and Government Entities Exempt Organization Examinations Division

EFFECTIVE DATE

(01-27-2011)

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4.76.26

Veterans' Organizations

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4.76.26.1
(01-27-2011)
Introduction

- (1) This manual section contains both detailed technical information and specific examination guidelines for veterans' organizations. It provides examination techniques effective in identifying and developing issues commonly encountered during the examination of such organizations.

Note: As veterans' organizations can be exempt under IRC §§501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), and 501(c)(19), guidance is being provided for each section. The two organizations exempt under IRC §501(c)(23), can be examined using such procedures, however, the activities of these organizations are unique to those entities.

- (2) These guidelines provide specific assistance for the examination of veterans' organizations and are not all-inclusive. The intent is not to restrict the examiner in identifying issues or using examination techniques not included herein.

4.76.26.2
(01-27-2011)
IRC §501(c)(19)

- (1) To be exempt under Internal Revenue Code IRC §501(c)(19), an organization must be either:
- A post or organization of past or present members of the United States Armed Forces
 - An auxiliary unit or society of such post or organization; or
 - A trust or foundation for such post or organization.
- (2) A veterans' post or organization must meet the following requirements to be exempt under IRC §501(c)(19):
- a. It must be organized in the United States or any of its possessions.
 - b. At least 75% of the organization's members are present or former members of the United States Armed Forces (veterans);
 - c. Of the remaining 25%, substantially all (90%) must be cadets who are students in a college or university R.O.T.C. program or at an Armed Services academy, or spouses, widows, widowers, ancestors, or lineal descendants of veterans or cadets; and
 - d. No more than 2.5% of the total membership may consist of individuals who are not veterans, cadets, spouses, widows, widowers, ancestors, or lineal descendants of veterans or cadets.
- (3) The organization must be operated exclusively for one or more of the following purposes:
- To promote the social welfare of the community (i.e., to promote the common good and general welfare of the people of the community);
 - To assist disabled and needy war veterans and members of the USAF and their dependents, and the widows and orphans of deceased veterans;
 - To provide entertainment, care, and assistance to hospitalized veterans or members of the USAF;
 - To carry on programs to perpetuate the memory of deceased veterans and members of the USAF and to comfort their survivors;
 - To conduct programs for religious, charitable, scientific, literary, or educational purposes;
 - To sponsor or participate in activities of a patriotic nature;
 - To provide insurance benefits for members or their dependents; or
 - To provide social and recreational activities for members.
- (4) No part of its net earnings may inure to the benefit of any private shareholder or individual.

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- (5) A “member” for purposes of IRC §501(c)(19) is an individual who is eligible for membership as described in the constitution and bylaws of the veterans’ organization.
- The organizing document of the veterans’ organization usually limits membership to past or present members of the United States Armed Forces when the post is controlled by a central organization in a group exemption.
 - A member of the veterans’ organization is entitled to attend membership meetings, to vote at such meetings, to hold office or to participate in national and state conventions.
 - The post also remits a per capita tax to the central organization for their membership dues.
- (6) A “nonmember” for purposes of IRC §501(c)(19) is an individual who is not a member of the organization but who participates in recreational activities sponsored by the organization or receives goods or services from the organization and pays for the services or goods received.
- This is a term that describes the social nonmember of the post.
 - A nonmember of the veterans’ organization is not entitled to attend membership meetings, to vote at such meetings, to hold office or to participate in national and state conventions.
 - The post does not remit a per capita tax to the central organization for their social nonmember dues.
 - A social nonmember is generally considered a member of the general public and a nonmember for IRC §501(c)(19) purposes unless the membership category is established in the constitution of the central organization or post’s creating document.

4.76.26.2.1 (01-27-2011) **Veterans**

- (1) Veterans are defined as present or former members of the United States Armed Forces. IRC §7701(a)(15) defines the “military or naval forces of the United States” and the term “Armed Forces of the United States” as including all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. Each term also includes the Coast Guard and the National Guard.
- (2) Members who are on active duty or are honorably separated from the National Guard and the Reserve Forces are also considered veterans.
- (3) Persons who have been dishonorably discharged from the United States Armed Forces are not considered “veterans” or “war veterans” for purposes of determining membership composition.

4.76.26.2.2 (01-27-2011) **Auxiliary Units**

- (1) Auxiliary units or societies are corporations or associations formed to support the purposes and activities of a post composed of veteran members. An auxiliary may be separately organized from the post after receiving a charter from their national parent organization.
- (2) An organization may be exempt under IRC §501(c)(19) as an auxiliary unit or society of a veterans’ post or organization if it meets the following requirements:
- a. It is affiliated with, and organized in accordance with the bylaws and regulations of, a veterans’ post or organization described above.

- b. At least 75% of its members are veterans, spouses of veterans, or related to a veteran within two degrees of consanguinity (i.e., grandparent, brother, sister, grandchild, represent the most distant allowable relationships).
 - c. All of its members are either members of a veterans' post or organization described above, or spouses of a member of such post or organization, or are related to a member of such post or organization within two degrees of consanguinity.
 - d. No part of its net earnings inures to the benefit of any private shareholder or individual.
- (3) An auxiliary must be separately organized and have a separate Employer Identification Number (EIN) or its members will be considered members of the post. These units are formed to support a post already recognized as tax-exempt under IRC §501(c)(19).
- (4) If the post is not exempt under IRC §501(c)(19), the auxiliary cannot qualify for tax exemption under IRC §501(c)(19).

4.76.26.2.3
(01-27-2011)
Trust of Foundation

- (1) All IRC §501(c)(19) organizations are permitted to provide life, sick, accident, or health insurance benefits for their members and their members' dependents. Most veterans' organizations do not provide these benefits directly; they contract out to existing public insurance companies. The administration of the insurance programs is often conducted through single purpose trusts or foundations. A trust or foundation may also be used to provide the insurance benefits directly. These organizations may also qualify for exemption under IRC §501(c)(19).
- (2) An organization may be exempt under IRC §501(c)(19) as a trust or foundation for a veterans' post or organization if it meets the following requirements:
- a. It is valid under local law and, if organized for charitable purposes, has a dissolution provision described in §1.501(c)(3)-1(b)(4) of the Treasury Regulations.
 - b. The corpus or income cannot be diverted or used other than to fund a veterans' post or organization for charitable purposes or as an insurance set-aside.
 - c. The trust income is not unreasonably accumulated, and a substantial portion of the income is distributed to such veteran post or organization, or for exclusively religious, charitable, scientific, literary, educational, or prevention of cruelty to children or animal purposes.
 - d. It is organized exclusively for one or more of those purposes enumerated above in IRM 4.76.26.2 for which a veterans' post or organization itself may be organized.

4.76.26.2.4
(01-27-2011)
Insurance Set Asides

- (1) A veterans' organization may create an insurance set-aside to provide direct insurance benefits through a separately organized trust or foundation.
- (2) An insurance set-aside may also be created without creating a separate organization. A restricted fund can be created within the IRC §501(c)(19) organization, provided adequate records are kept describing the amounts and designated purposes of the funds.

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- (3) Amounts paid by members for insurance benefits and properly set aside are not subject to tax as unrelated business income. Treasury Regulation §1.512(a)-4(b).
- To be considered properly set aside, the funds must be kept separate from the organization's general funds and accounts.
 - Such amounts must be limited to those reasonably necessary to provide insurance benefits, which are in fact provided, and must be used solely for paying those benefits to the members or for administering the insurance program.
 - However, excess funds from an experience gain may be used for IRC §170(c)(4) purposes or for the reasonable costs of distributing funds for such purposes.
 - Funds for any other purpose may not be commingled with the insurance set-aside.
 - Any other uses of the set-aside funds, such as using them as security for a loan, are considered to be withdrawals from the set-aside, and these amounts are included in unrelated business taxable income in the taxable year they are withdrawn, without regard to any modification provided by IRC §512(b).
 - The income generated from the set-aside funds may be similarly set aside. It must be set aside in the taxable year in which it would be includible in gross income but for IRC §512(a)(4).
 - Such income may be invested, pending the action contemplated by the set-aside, without being regarded as having been used for other purposes.
- (4) The special rules regarding income received by IRC §501(c)(19) organizations from providing insurance benefits and expenditures of funds derived from insurance activities do not apply to expenditures made for lobbying purposes. See Senate Report No. 92-1082, 92d Cong. 2d Sess. (reproduced in 1972-2 C.B. 713, at 716).

4.76.26.2.5 (01-27-2011) Exempt Activities

- (1) IRC §501(c)(19) veterans' organizations have been permitted broad purposes by Congress. They promote Americanism, sponsor youth activities, provide color guards, conduct patriotic ceremonies and functions, and conduct community activities. Many also conduct social activities among their members.
- (2) The following activities are consistent with the requirements for exemption:
- Reviewing proposed legislation that may affect veterans, at both the federal and state levels,
 - Testifying before a governmental body with respect to such legislation, and
 - Informing members about the proposed legislation.
- (3) The following are examples of some of the activities conducted by veterans' organizations that are promoting social welfare:
- Sponsoring youth activities whether or not the activity is limited to the members' children. Buying equipment and uniforms for a youth athletic team is an appropriate post activity.
 - Allowing other community organizations such as the social welfare organizations (§501(c)(4)), a public school organization, or a community group to use the post facility without charge.
 - Sponsoring the Boy Scouts, Girl Scouts, or other youth units of the post, and providing scholarships for students.

- Making donations to charities described in IRC §501(c)(3).
 - Visiting sick or hospitalized members, veterans and their families.
- (4) Social and recreational activities are exempt activities if conducted among post members. Such activities may include:
- The operation of a bar and/or restaurant,
 - Gambling, and
 - Dinner dances.
- (5) The auxiliary units and societies that have been recognized as tax-exempt under IRC §501(c)(19) support the purposes and activities of the post. Including their members in the social and recreational activities of the post also furthers the purposes of the post.

4.76.26.3
(01-27-2011)
IRC §501(c)(4)

- (1) An IRC §501(c)(4) veterans' organization must be organized as a not-for-profit organization and operated exclusively for social welfare purposes. Its primary activities must promote the common good and general welfare of the people of the community. Social welfare activities do not include social, political, or business activities. The net earnings of an IRC §501(c)(4) organization may not be used for private purposes or to benefit private individuals.
- (2) There are no membership requirements under IRC §501(c)(4). Exemption is based solely on the type of activities conducted. Membership requirements can be set by the post or its central organization and include any category of members that is allowed by its charter.
- (3) Auxiliary units supporting an IRC §501(c)(4) post may qualify for exemption under IRC §501(c)(4) by engaging primarily in activities that directly promote the social welfare of the people of the community.
- (4) A central veterans' organization exempt under IRC §501(c)(19) may have subordinate posts exempt under IRC §501(c)(4) and vice versa. All subordinates under a group ruling, however, must be exempt under the same section of the Code. For example, the parent may be exempt under IRC §501(c)(4) and list all of its IRC §501(c)(19) subordinate posts on its group ruling. The group ruling may not include subordinate organizations exempt under any other section of the Code. Such organizations may apply for tax-exemption on their own.

Note: A central veterans' organization may also have subordinates that are not tax-exempt.

- (5) Social welfare activities include promoting, sponsoring and participating in patriotic activities such as Fourth of July parades, school Flag Day ceremonies and Junior ROTC groups. Assisting needy and disabled veterans, widows, or orphans of deceased veterans as well as conducting hospital visits, driving the sick and disabled to the hospital or to medical facilities, recycling, adopting a road for clean up purposes, and sponsoring a youth baseball team, or other youth groups, are also social welfare activities. The social welfare activities listed above are not exclusive.
- (6) Providing the use of the facility without charge or for actual cost to other community organizations would be a social welfare activity. Charging commer-

cial rents or providing commercial services, such as food and beverage service, might result in the income being subject to the unrelated business income tax.

- (7) Operating a bar, restaurant or game room is not a social welfare purpose. Such activities are social and recreational and may be considered business activities. They do not benefit the community as a whole.

4.76.26.4
(01-27-2011)
IRC §501(c)(7)

- (1) IRC §501(c)(7) exempts from tax social clubs that are organized and operated primarily for pleasure, recreation, and similar nonprofitable purposes. In keeping with this purpose, nonmember income from all sources is limited and taxed as unrelated business income. Veterans' organizations whose activities are social and recreational, such as operating a bar, restaurant, canteen or casino for members, may be recognized as tax-exempt under IRC §501(c)(7).
- (2) Social clubs may have different categories of members and are not required to have a specific percentage of veteran members.
- (3) To satisfy the organizational requirements for exemption, a club's charter, bylaws or other governing instrument must not include purposes that are not directed toward pleasure and recreation.
- (4) An organization will not qualify for exemption if its organizing documents or any written policy statement contains a provision, which provides for discrimination on the basis of race, color, or religion.
- (5) A club's members must share common goals and interests that are furthered through its social and recreational activities. The fellowship among members that grows through such participation is considered a key component of a social club.
- (6) A veterans' organization is not exempt under IRC §501(c)(7) if it provides commercial services, such as the sale of packaged liquor or carry out food. Such activities are not traditionally engaged in by social clubs.
- (7) The club may specify voting and non-voting members and may choose to limit member benefits, such as the use of the club facilities, based on membership categories. Eligibility requirements, formal admittance procedures and a dues structure are internal matters to be decided in accordance with the club's charter and by-laws.

Note: A club whose membership categories serve as a way to permit the general public to use the facilities will fail to qualify for this reason.

- (8) An IRC §501(c)(7) veterans' organization can not provide its members sickness, death and/or similar benefits. These types of benefits are not considered social or recreational in nature and are not permitted under IRC §501(c)(7).
- (9) As a general rule, an IRC §501(c)(7) club may receive up to 35% of its gross receipts from sources outside its membership. This includes investment income. Within the 35% limitation, no more than 15% of the gross receipts may be derived from the use of a club's facilities or services by the general public. Gross receipts are receipts from the normal and usual activities of the club.

4.76.26.5
(01-27-2011)
**IRC §501(c)(8) or
§501(c)(10)**

- (1) To qualify for exemption under IRC §501(c)(8), a veterans' organization must:
 - a. Be fraternal in nature,
 - b. Operate under the lodge system, and
 - c. Provide for the payment of life, sick, accident, or other benefits to its members.
- (2) An IRC §501(c)(8) veterans' organization may create a separate insurance subsidiary to provide benefits to its members. These subsidiary organizations may also qualify for exemption under IRC §501(c)(8).
- (3) A fraternal veterans' organization exempt under IRC §501(c)(10) is one that is described in IRC §501(c)(8) except that it does not provide benefits to its members. The net earnings of IRC §501(c)(10) veterans' organizations must be devoted to charitable, religious, scientific, literary, educational or fraternal purposes.
- (4) "Fraternal" means brotherly or friendly. The members of an IRC §501(c)(8) or IRC §501(c)(10) veterans' organization must share common ties and come together to pursue common goals. An organization whose members are mostly veterans who have joined together to pursue common goals is fraternal in nature.

Note: The shared experience of serving in the Armed Forces is sufficient to establish that the members share a common bond.
- (5) Operating under the lodge system means carrying on activities under a form of organization that is comprised of local branches chartered by a parent organization. Requirements include:
 - a. The local branches, called lodges or chapters, must be separately organized and self-governing but operated under the general control and supervision of the parent lodge and subject to its rules, laws and edicts.
 - b. Both the parent and local organizations must be active.
 - c. Each organization holds regular meetings at a designated place, adopts a representative form of government, and performs its work according to a set ritual.
- (6) To qualify for exemption, an IRC §501(c)(8) veterans' organization must offer some type of insurance benefits.
 - Life insurance, accidental death and dismemberment insurance and health insurance are some types of appropriate benefits.
 - Benefits need not be limited to insuring members against personal risk, but may also include insurance against property loss.
 - An organization is not required to offer all types of insurance benefits.
- (7) It is not required that all members be covered by the benefits program or that all eligible members purchase policies for the benefits offered. Organizations may have two classes of members (beneficial and non-beneficial). Most of the members must however be entitled to participate in the benefits program.
- (8) Fraternal veterans' organizations may operate a bar and/or a restaurant for its members and their bona fide guests. Operating such facilities for members is a fraternal activity and will not jeopardize exemption under IRC §501(c)(8) or IRC §501(c)(10).

4.76.26.6
(01-27-2011)
IRC §501(c)(2)

- (1) (1)Veterans' organizations exempt under IRC §501(c)(19), 501(c)(4), 501(c)(7), 501(c)(8) and 501(c)(10) may form separate title holding organizations, recognized as exempt under IRC §501(c)(2), to hold title to their facilities. This may be necessary in states where non-incorporated entities cannot hold title to real property.
- (2) An IRC §501(c)(2) organization must be organized for the exclusive purpose of holding title to property, collecting income from that property, and turning that income over to the exempt organization that controls it. This type of organization should not engage in any unrelated trade or business.
- (3) A title holding corporation whose purposes are identical to the veterans' organization it supports, but whose only activity is holding title to the post, lodge or clubhouse, collecting rent from the supported organization, and using the rent to pay for the upkeep of the facility can qualify for exemption under IRC §501(c)(2).
- (4) A title holding organization may not operate "video poker machines "or other forms of gambling for members of the veterans' organization that forms it. The operation of casino nights, video poker machines or other forms of gambling are considered recreational activities and are outside the scope of IRC §501(c)(2).
- (5) An IRC §501(c)(2) organization may receive an incidental amount of its income from the operation of vending machines, such as a soft drink machine, located on its property without jeopardizing its exemption. To be considered incidental, the amount of income generated by all unrelated activities must not exceed 10% of the organization's gross receipts.
- (6) The rental of personal property is considered the conduct of a trade or business and may jeopardize exemption under IRC §501(c)(2) if, along with other unrelated receipts, the income generated exceeds 10% of gross receipts.

Exception: The rental of personal property as part of a mixed lease will not affect exemption but may result in some or all of the income generated from the lease being taxed under IRC §511.

4.76.26.7
(01-27-2011)
Group Rulings

- (1) A central organization may apply for a group ruling for itself and all of its affiliated organizations. Subordinates covered by a group ruling do not have to file an application for recognition of tax-exemption.
- (2) A central veterans' organization may have subordinates that are not tax-exempt.
- (3) When a post exempt under IRC §501(c)(19) fails to meet the membership requirements, it is obligated to notify its parent and the IRS that it does not qualify for tax-exemption and should not be listed in the group exemption roster. The post may continue to maintain its affiliation with the parent, but it may not maintain exemption as a subordinate post under the parent's group ruling.
- (4) As long as the auxiliaries meet the criteria for exemption under IRC §501(c)(19), they may be included in the group ruling.

- (5) Members of the various posts exempt under the same group ruling may use the facilities of and participate in activities of the other posts without jeopardizing exemption of the host post.
- (6) Adding new posts or dropping non-qualifying posts from a group ruling will have no effect on the parent's exempt status as long as the parent organization continues to satisfy the legal requirements for exemption.
- (7) A subordinate must have the same fiscal year as the parent organization to be included in the parent organization's consolidated information return.
- (8) A subordinate must also have the same exempt status as all subordinates. If a subordinate does not meet the qualification of the other subordinates, it must be revoked. its status should be changed to 28, No longer covered under a group ruling.
- (9) A revoked subordinate that wants to be exempt must file its own application for exemption.

4.76.26.8
(01-27-2011)
IRC §170(c)(3)

- (1) IRC §170(c)(3) provides an income tax deduction for contributions to a post of "war veterans" (or an auxiliary unit of said organization) if it is organized in the United States or any of its possessions, and no part of its net earnings inures to the benefit of any private shareholder or individual. To qualify for deductibility of contributions, a veterans' organization may be exempt under IRC §501(c)(19) or any other appropriate section of the Code, but must also satisfy both a membership requirement and a purpose requirement.
- (2) To meet the membership requirement, at least 90% of the members must be war veterans. In addition, substantially all the other members must be either veterans (but not war veterans), or cadets, spouses, widows, or widowers of war veterans, veterans or cadets. For the purpose of the 90% test, war veterans may include members of expeditionary forces who actually served in combat situations in foreign countries between the periods of war as defined below.

Note: The war veterans membership requirements are outlined in Treasury Regulation §1.501(c)(19)-1, which has not been updated to reflect changes made to IRC §501(c)(19) by the Military Family Tax Relief Act of 2003, which expanded the membership categories to include two degrees of consanguinity.

- (3) A war veteran is a person who served in the Armed Forces of the United States during the following periods:
 - April 21, 1898, through July 4, 1902;
 - April 6, 1917, through November 11, 1918;
 - December 7, 1941, through December 31, 1946;
 - June 27, 1950, through January 31, 1955;
 - February 28, 1961, through May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period;
 - August 5, 1964, through May 7, 1975, and
 - August 2, 1990, and will end on the date prescribed by Presidential Proclamation or by law.

Note: The definitions of the periods of war are listed in 38 CFR 3.2.

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- (4) A war veterans' organization must also be organized and operated primarily for the following narrower purposes:
- Furthering comradeship among persons who are or have been members of the Armed Forces,
 - Honoring the memory of deceased veterans and members of the Armed Forces and aiding and comforting their survivors,
 - Encouraging patriotism, and
 - Aiding hospitalized, disabled, and needy war veterans and their dependents.

4.76.26.9
(01-27-2011)
**Unrelated Business
Income**

- (1) Veterans' organizations, regardless of the code section of exemption, are subject to tax on unrelated trade or business income. To be considered unrelated, a trade or business must be regularly carried on and not substantially related to the performance of an organization's exempt purposes other than its need to raise money to carry on its programs.
- (2) The exceptions to UBI treatment, as provided under §513, apply to all exempt veterans' organizations. These exceptions are:
- Volunteer labor
 - Selling donated merchandise
 - Certain bingo games
 - Low cost articles
 - Exchange or rental of members lists

Note: The exchange or rental of member or donor lists between posts of war veterans eligible to receive tax deductible contributions is not considered an unrelated trade or business.

- (3) The bingo game must be legal and must be conducted in a jurisdiction that does not permit commercial bingo. The game must be one in which wagers are placed, the winners determined, and prizes are distributed in the presence of all persons placing wagers in that game. The definition of bingo does not include the sale of pull-tabs, instant bingo or similar raffles. Bingo also does not include any other gambling activities.
- (4) The operation of a bar and restaurant with paid staff for use by members or the general public is not an exempt activity for an IRC §501(c)(4) organization. Because this activity is a trade or business, regularly carried on, and not substantially related to exempt purposes, all of the income is taxable.
- (5) Social activities, such as the operation of the bar and restaurant, are appropriate for veterans' organizations exempt under IRC §§501(c)(19), 501(c)(7), 501(c)(8) and 501(c)(10), as long as the activities are limited to members and their bona fide guests.
- (6) A "bona fide guest" for IRC §§501(c)(7) and 501(c)(19) purposes is an individual who is invited by a member to participate in an activity and whose expenses are paid for by the member. If the guest pays for his own recreation or food, the guest is not a bona fide guest. Income generated by nonmember participation in the organization's activities is considered unrelated business income and is ordinarily taxable under IRC 511.
- (7) Substantial unrelated activities may adversely effect exempt status. Such activities include:

- a. Renting out facilities to the general public;
- b. Opening bar and dining facilities to the general public;
- c. Selling liquor and/or food to members and/or the public for consumption off the premises; and
- d. Gaming activities with nonmembers.

(8) For guidance on unrelated trade or business income activities with respect to the various exemption code sections (IRC §§501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), and 501(c)(19)), see Publication 3386, *Tax Guide-Veterans' Organizations*.

4.76.26.10
(01-27-2011)
**Taxes Associated With
Gaming**

- (1) Various taxes may be incurred in the operation of gaming activities. Some taxes, such as withholding and employment taxes, apply regardless of whether the income is subject to unrelated business income tax. Other taxes, such as UBIT, occupational, and wagering taxes apply depending on the situation.
- (2) Gaming activities are frequently conducted in connection with the operation of a bar by the veterans' organization. Other examples of gaming activities conducted by veterans' organizations include:
 - Bingo gaming sessions held at either the organization's facility or an offsite bingo hall, frequently open to the public.
 - Sales of pull-tabs to members and non-members, either at a bar or during bingo gaming sessions.
 - Operation of coin operated pull-tab vending machines in either the bar or a bingo hall.
 - Raffles of food or other prizes, involving members and/or the public.
 - Keno games, either operated on site by a Keno caller, or via a computerized satellite Keno number calling system.
 - Lottery tickets, obtained from the state lottery commission.

4.76.26.10.1
(01-27-2011)
UBI Considerations

- (1) Income from the sale of "Instant Bingo" or "Mini Bingos" does not qualify for the bingo exception under IRC §513. Instant Bingo or mini bingos are considered pull-tab games, not regular bingo games. See Julius M. Israel Lodge of B'nai B'rith No. 2113 v. Commissioner, T.C. Memo 1995-439, aff'd, 98 F.3d 190 5th Cir. (1996).
- (2) Payment made to bartenders, waitresses, snack bar staff, maintenance workers, security, etc. may be considered in determining "substantially all" for purposes of the "volunteer labor exception."
 - a. The provision of free drinks or food to workers may be considered compensation if the facts show that the free items are more than a mere gratuity and are intended to be compensation for the workers' services.
 - b. Compensation also includes any tips the workers may receive from patrons at the gaming session. Many local jurisdictions strictly prohibit tipping at gaming functions. If tipping is allowed, the exception for "volunteer" labor does not apply.
- (3) The waiver or reduction of fees for workers for items or services normally charged to non-workers also constitutes compensation.

4.76 Exempt Organizations Examination Guidelines

- (4) Sales of daubers (large pens for marking bingo cards,) food, beverages, cigarettes, or other materials will be subject to UBIT, if sold to the public, and not otherwise meeting one of the UBI exceptions. Sales of the bingo cards themselves are not subject to tax.

4.76.26.10.2
(01-27-2011)

Withholding Taxes

- (1) Organizations are subject to the withholding and backup withholding rules for games such as bingo, pull-tabs and raffles.
- (2) The table below explains when withholding and backup withholding is required:

Game	Regular gambling withholding Required- prizes more than	Backup withholding Applies on prizes Equal to or exceeds
Bingo	No withholding required	\$1,200
Instant Bingo, Pull Tabs, Raffles	\$5,000	\$600

- (3) Withholding refers to the regular withholding of income tax from prizes paid. This withholding is required at the rate of 28%.
- (4) Backup withholding refers to the withholding of tax that applies to reportable prizes when the recipient fails to provide a taxpayer identification number obtained by filing Form W-9. The backup withholding rate is also 28%. (For years starting after December 31, 2010, the sunset provisions of P.L. 107-16 will return the backup withholding rate to 31%, unless otherwise modified by a new law before then.)
- (5) If the prize is not cash, the fair market value of the item won is considered the amount of the winnings. The withholding and backup withholding rates, if required, are applied to the fair market value of the item won. The amount to be withheld should be collected from the prize winner.
- (6) The exempt organization reports regular withholding from gaming winnings on Form 945, *Annual Return of Withheld Federal Income Tax*, line 1. Backup withholding is reported on Form 945, line 2.
- (7) Certain wagering transactions require the filing of Form W-2G, *Certain Gambling Winnings*, and Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*. The Form W-2G is filed when an individual(s) wins a prize with a minimum specific dollar amount at a gaming event. The winner must provide the game operator with proper identification including his/her social security number.
- (8) The following chart describes when a Form W-2G normally needs to be issued:

Type of game:	Amount of prize paid is equal to or greater than:
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Bingo Instants/Pull-tabs Slot machines Keno	\$1,200Not reduced by wager \$600Not reduced by wager At least 300 times the amount of the wager \$1,200Not reduced by wager \$1,500Reduced by wager
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4.76.26.10.3
(01-27-2011)
Employment Taxes

- (1) If the gaming workers are compensated, whether by the veterans' organization or by patrons' tips, the organization is responsible for filing and paying employment taxes.
- (2) In addition to gaming workers, the organization may have other individuals that should be treated as employees, such as security watchmen, snack bar workers or janitors.
- (3) All tips received by an employee are taxable income subject to federal income tax. Tips paid in cash (or checks or other cash equivalent, including charged tips) of \$20 or more that an employee receives in a calendar month while working for any one employer are wages subject to Social Security and Medicare taxes, FUTA, and income tax withholding.
- (4) Tips of less than \$20 received by an employee during a calendar month while working for a particular employer are not wages for Social Security and Medicare taxes, FUTA or federal income tax withholding purposes, even though such tips are taxable income.
- (5) Once the amount of tips received in a calendar month reaches \$20 from any one employer, the entire amount of tips received is included in wages, not just the amount over \$20. An employee who receives \$20 or more in tips must report those tips in writing to the employer by the tenth day following the month in which the tips are received.

4.76.26.10.4
(01-27-2011)
Gaming Excise Taxes

- (1) All organizations which conduct gaming activities may be subject to the imposition of a wagering excise tax and an occupational tax per IRC §§4401 and 4411.
- (2) There are two types of wagering taxes:
 - a. An excise tax imposed on the amount of the wager.
 - b. An occupational (or stamp) tax imposed on the persons engaged in receiving wagers.
- (3) The wager is the amount risked by the person placing the bet, not the amount the person stands to win. The term "wager" does not include drawings conducted by exempt organizations so long as no part of the net proceeds of such drawing inures to the benefit of any private shareholder or individual.
 - Pull-tabs, raffles and tip jars meet the definition of taxable wagers placed in a lottery.
 - Bingo Games (not Instant Bingo) are specifically excluded from the application of the wagering tax.
- (4) Drawing or lottery proceeds used for the general operating expenses of the organization constitute inurement to the benefit of members for purposes of determining the application of the wagering tax.

4.76 Exempt Organizations Examination Guidelines

Example: Post ABC, a IRC §501(c)(19) organization, sells pull tabs to raise money. The pull tabs are sold to members and non-members, as the post does not observe the bona fide guest rule. The proceeds of the pull tab sales go into the General Fund and are used to pay the general operating expenses of the Post. The wagering tax applies because the members of the Post are receiving a benefit from the pull tab sales. Specifically, use of the pull tab proceeds to offset the general expenses of the Post's social or recreational activities, or to reduce the members' dues, constitutes inurement.

- (5) The wagering excise tax of IRC §4401 is imposed on the gross amount of the wagers received. The amount of the tax depends upon whether the wager is authorized under state law.
 - a. If the wager is authorized under state law, the amount of the tax is 0.25% of the amount of the wager. Thus, if the gross wagers were \$1,000, the amount of the tax would be \$2.50 ($\$1,000 \times .0025$).
 - b. If the wager is not authorized under state law, the amount of the tax is 2% of the amount of the wager. Thus, if the gross wagers were \$1,000, the amount of the tax would be \$20 ($\$1,000 \times .02$).
- (6) The excise tax under IRC §4401 is paid with the filing of Form 730, *Tax on Wagering*. Form 730 is a monthly tax return and is due each month by the last day of the month following the month for which the veterans' organization is reporting wagers.
- (7) The occupational or stamp tax of IRC §4411 is an annual fee imposed on each person liable for the tax on wagers, or upon any person engaged in receiving wagers for or on behalf of any person so liable.
 - a. If the wager is authorized under state law, the amount of the occupational tax is \$50 per year per person receiving wagers.
 - b. If the wager is unauthorized under state law, the amount of the tax is \$500 per year per person receiving wagers.
- (8) The tax is due from a "principal". A principal is a person or organization in the business of accepting wagers, or an employee agent of such organization. The latter would include, for example, a paid bartender who sells pull-tabs over a veterans' organization's bar. Both the bartender and the organization would each be subject to the tax.
- (9) A Form 11C, *Occupational Tax and Registration Return for Wagering*, must be filed before such organizations or persons begin accepting wagers. After the return is filed and the fee paid, the IRS will issue a letter as proof of registration and payment.

4.76.26.11
(01-27-2011)
**Pre-audit Examination
Guidelines**

- (1) Prior to initiating an examination of a veterans' organization, determine the code section of exemption and whether the organization is under a group ruling. Use command code INOLES or BMFOLO.
- (2) For organizations with a group exemption number (GEN), the first name line on INOLES or BMFOLO will be that of the parent organization, and the second line is the name of the specific organization to be examined. All reports and letters will need to include both name lines in the mailing address.

- Organizations under a group ruling will not have a separate determination application file. The determination letter that should be retained by the organization would be a copy of the group ruling letter.
 - Many posts will also have affiliated auxiliaries listed under the same group ruling, and will share the same address. If there is an auxiliary, income is often split between the two entities based on the type of activity being performed.
 - Listings of all of the various posts and auxiliaries under a group ruling can sometimes be found on the website of the national headquarters of that organization.
 - Copies of the articles and bylaws of the national organizations may be available online, and can be reviewed prior to the examination. Organizations under the group ruling often use the same bylaws.
- (3) Many organizations have websites, but not all. Those conducting gaming activities open to the public will frequently have a website in which they advertise the location and times of operation of their activities.
- (4) By visiting the state gaming (or gambling) commission/agency website, records may be available of the types of gaming licenses obtained, whether any employees are registered for gaming licenses, and the upper limit of the gaming proceeds permitted per type of license. Some states even provide copies of reports and internal records provided by the organizations, such as ledgers and cancelled checks.
- (5) State gaming/gambling commission/agency websites may also provide records of administrative actions taken against veterans' organizations for non-compliance with state laws, such as reporting, payouts, or failure to use up gaming proceeds.
- (6) The websites of state liquor control boards, or other equivalent agencies, may provide records as to whether the organization has a liquor license, and the number of employees who are permitted to sell liquor on the premises.
- (7) Review the filing history of the organization via command code BMFOLT to determine the returns filed. Lack of various returns may indicate either the absence of an activity (bar operation, gaming,) or that the organization is not cognizant of its reporting requirements.
- Forms 990 and 990-T are recorded as MFT 67 and 34.
 - Forms 940, 941, and 945 are listed as MFT 10, 01, and 16.
 - Forms 11-C and 730 are reported under MFT 63 and 64.
- (8) Research the prior and subsequent years Forms 990 and 990-T via SEIN (<http://sein.osc.irs.gov>), if filed. SEIN provides images of the actual filed returns, as scanned at the Ogden Service Campus.
- For 2007 and prior years, revenues from gaming activities would be reported under special events, with the box checked for gaming activities. Separate schedules were required for inventory sales (typically from bar operations,) and gaming activities.
 - For 2008 and subsequent years, gaming activities are discussed in the Form 990 Parts IV, V, and VIII, as well as Schedule G.
 - Form 990-T is used to report taxable sales of merchandise and taxable gaming revenues. Other types of income may also be reported, depending on the code section of the veterans' organization.

4.76 Exempt Organizations Examination Guidelines

- Comparative balance sheet analysis will show whether the organization's activities are shrinking, expanding, or staying constant.
 - Any decisions to expand the examination to prior and/or subsequent years requires approval from management.
- (9) Many organizations will offset gaming revenues with "lawful purpose expenditures" as being required under state law. These often incorrectly generate net operating losses.
- Lawful purpose expenditure requirements under South End Italian Independent Club, Inc. v. Commissioner, 87 T.C. 168 (1986), acq. in result, 1987-2 C.B. 1, are subject to state law requirements. Retention of gaming revenues in a gaming account in lieu of transferring amounts to subsidize the organization's operations does not meet the requirements for lawful purpose expenditure deductions.
 - Lawful purpose expenditure deductions are limited to the extent to which the organization has taxable gaming revenues. Taxable sales of food and beverages are not subject to the state gaming laws.
 - While there may not be a UBTI after deduction of lawful purpose expenditures against taxable gaming revenues, the fact that such revenue is taxable will often trigger the liability for gaming excise taxes.
- (10) Use command code IRPTR at least three weeks prior to the examination to obtain the Forms W-2 and 1099 information. (If sent to RICS via use of destination code R, electronic copies will need to be obtained from EO EPR. Electronic copies can be used with the LMSB Form W-2/W-2G/1099/AP Data Analysis tool.)
- a. Compare the list of officers on the Form 990 to the individuals who received Forms W-2 and 1099. Among the officers, an adjutant may frequently be listed as receiving the largest amount of compensation, as he or she is typically a veteran who serves as the office administrator.
 - b. Other individuals who receive Forms W-2 and 1099 may be bar managers, bartenders, wait staff, and gaming employees. Tip reporting of bar and wait staff should be addressed in any examination of a veterans' organization that has a bar, and gaming staff if operating bingo.
 - c. Required Forms W-2 and 1099 may be missing if the various bank accounts are administered by different individuals, such as a bar manager in charge of the bar account, a gaming manager handling the gaming account, while the adjutant manages a post account.
 - d. Required Forms 1099-MISC may also be missing for services rendered to the organization, such as bands performing at dinner dances, building trades contractors who make repairs, janitorial services, and grounds keeping services.
- (11) Tailor the initial interview to the type of veterans' organization being examined. Areas of focus include:
- Whether the organization meets the membership requirements,
 - The kinds of records retained as proof of veteran status,
 - Whether there is a related auxiliary, (either a separate entity or one that uses the same EIN,)
 - If there is an auxiliary, how the activities and income is divided between the two entities,
 - Whether the post provides insurance directly, or has benefits provided through a separate trust or foundation,

- The existence and purpose of a set aside account,
 - The activities conducted by the organization,
 - How many sets of account books (post, bar, gaming, general, etc.) are maintained by the organization,
 - Who is responsible for managing each account,
 - Whether the organization has social members,
 - The rights permitted for social members,
 - Whether the organization has true "bona fide guests",
 - Whether access to the facility is restricted,
 - Who pays for meals and drinks, (Form 990-T)
 - Whether membership cards or other identification is requested at the time of purchase, (Forms 730, 990-T)
 - The amount of tips the bartender and wait staff receive, (Form 941)
 - The types of gaming activities conducted at the facility,
 - Who is permitted to pay to play the gaming activities, (Form 730)
 - Whether the activities (bar and gaming) are fully licensed, (Form 730)
 - Whether the bartenders or others selling pull-tabs, lottery tickets, raffle tickets, or other non-bingo sources of gaming revenue have their own employer identification numbers, (Form 11-C)
 - The portion of the facility accessible by the public, (Form 990-T)
 - The portion of the facility used for the operation of a bar and/or restaurant, (Form 990-T) and
 - The portion of the facility used for gaming activities. (Form 990-T)
- (12) For auxiliary organizations, interview questions should focus on:
- If the auxiliary is not separately established, whether the post and auxiliary jointly meet the membership test,
 - If separately established, whether the auxiliary meets the membership test for just auxiliaries,
 - The activities of the auxiliary,
 - The types of income, and
 - The division of labor, income, and expenses between the post and the auxiliary.
- (13) As the trust and foundations are significantly different in nature from the posts and auxiliaries, interview questions to consider include:
- The types of insurance provided,
 - The types of membership for which insurance is provided,
 - The existence and purpose of a set aside account,
 - The number and names of posts and auxiliaries participating in the insurance programs, and
 - The number and names of posts and auxiliaries otherwise supported by the trust or foundation.
- 4.76.26.12
(01-27-2011)
**Field Examination
Guidelines**
- (1) Review the following to determine the composition of membership of the organization:
- a. Articles of incorporation, charter, bylaws, and meeting minutes,
 - b. Membership applications, DD Forms 214, or other discharge documents,
 - c. Membership cards and master member lists if they designate status as veteran, non-veteran, auxiliary, or other membership class, and
 - d. The dues structure for the classes of membership.

4.76 Exempt Organizations Examination Guidelines

Note: The organization must maintain members' military service dates to establish that contributions to the organization are deductible, if a war veterans' organization under IRC §170(c)(3).

Caution: Social members are considered non-members if not specified in the bylaws, and thus any income from such persons is subject to UBIT.

- (2) If there is an affiliated auxiliary, determine whether it was separately established or operates under the post's EIN.
- (3) Perform the membership test, if a §501(c)(19) organization.
 - a. Count the number of members who are active service persons or are veterans.
 - b. Count the number of spouses, dependents, parents, grandparents, and grandchildren who are members.
 - c. For auxiliaries who operate under the same EIN, their members are included in the count for the veterans' organization.
 - d. Count the social/associate members.
 - e. Determine whether any of the social members would otherwise qualify as members by their relationship to veterans who are not members of the post.
 - f. Divide the number of non-qualifying (social/associate) members from the total membership to arrive at the membership percentage.
 - g. To qualify, veterans/active service persons must account for at least 75%, the cadets/spouses/widows/widowers/ancestors/lineal descendants must account for 22.5%, and social/associate members may not exceed 2.5% of the membership.

Example: Post A is chartered by a national organization, and adopted the governing instruments of said organization. Post A is exempt under the group ruling of the national organization. Post A has 969 individuals participating in its bar and gaming activities. Of the 969, 730 are veterans, 25 are children of veterans, 6 are parents of veterans, and 17 are cadets. All of the aforementioned are members per the national and post governing instruments. The remaining 191 individuals are social non-members, who are not defined in governing instruments of either set of documents, and pay for their own drinks and pull-tabs. The organization meets the membership test requirements: $730 \div 778 = 93.8\%$. The social nonmembers do not count against the membership totals. The social nonmembers are considered a member of the general public for §501(c)(19) purposes.

Example: Post A has a related Auxiliary B, also chartered by the same national organization. Due to a decline in membership, the auxiliary is merged into the post, and ceases to have a separate exemption. Post A now has 730 veterans, 205 spouses of veterans, 25 kids of veterans, 6 parents of veterans, and 17 cadets. The post no longer meets the membership test, as $730 \div 983 = 74.2\%$.

Note: The lineal descendant connection must be within two degrees of consanguinity. This means kids and grandkids of veterans, as long as the veteran was not dishonorably discharged.

- (4) Interview the bartender(s) and wait staff.

- a. If social members are not defined in the bylaws, determine whether the social members are permitted to purchase food, beverages, merchandise, and/or non-bingo gaming tickets (pull-tab, raffle, lottery, etc.)
 - b. Determine if guests are purchasing their own meals, drinks, or merchandise.
 - c. Request an explanation of the recording system for purchases (cash box, cash register, journal, etc.)
 - d. Determine whether there is a sign in book for members bringing guests and/or visiting members from other posts under a group ruling.
 - e. Obtain copies of tip journals, if maintained. If not, ask about the amount of tips received on a daily basis. See IRM 4.23.7.
 - f. Inquire the procedures and paperwork for renting the hall.
 - g. Get an explanation of the processes for pull-tab, raffle, and/or lottery ticket sales.
 - h. Identify all of the wait staff and bartenders.
 - i. Determine whether the staff (or other paid employees) provides catering services during hall rentals.
- (5) Review the journals and ledgers of the organization.
- a. Prepare a spreadsheet tracking payments made by the organization for services provided, listing the payee, dates, amounts, and check number.
 - b. Compile totals for each payee.
 - c. Match the payees who received \$600 or more against amounts reported on Forms 1099-MISC.
 - d. Review the ledger for bonuses or other fringe benefits provided to the employees of the organization.
 - e. Determine whether the fringe benefits paid out are reported with the other compensation on Forms W-2.
 - f. Identify and record the gross receipts from the bar and gaming activities.
 - g. Calculate the amount of direct expenses attributable to the bar and gaming activities.
 - h. Record all instances of hall rentals, along with the names of renters, the amounts received for rent, and the dates of the rentals.
 - i. Look for indications of private benefit or inurement.
- (6) Review the bank and/or brokerage statements. These may include scanned images of checks provided by the bank, or the actual checks if returned by the bank.
- a. Determine the amount of funds transferred from the gaming account to the general, bar, post, or other accounts.
 - b. If there are no transfers from the gaming account, identify all expenditures made from the gaming account for purposes under IRC §501(c)(19).
 - c. Track any electronic transfers from the accounts, and verify whether they were transfers between accounts, or to an external account.
 - d. Request additional information on transfers identified as being made to external accounts.
 - e. For IRC §501(c)(7) veterans' organizations, identify the total amount of investment income.
 - f. Determine whether any withdrawals were made in cash, or that checks were written to cash.
 - g. Obtain further information as to the disposition of any cash withdrawn from the accounts.
 - h. Look for indications of private benefit or inurement.

4.76 Exempt Organizations Examination Guidelines

- (7) Request and review the records of the hall rentals.
 - a. Determine whether the renters were members.
 - b. Identify the frequency of hall rentals, to determine whether the organization is regularly carrying on the activity.
 - c. Review the hall rental agreements to identify all services such as catering or the rental of personal property included in the agreement.
- (8) Analyze the newsletters (both in print and online) to check for advertising income and mention of other potential UBI generating activities.
- (9) Obtain a copy of a floor plan, take pictures of the facility, and/or take measurements using a measuring tape, to record the dimensions and details of any portions of the facility open for public patronage.
- (10) Review contracts and agreements for indications of benefits to officers or other individuals.

Example: Rental of personal or real property to the organization at greater than fair market value.

- (11) Review and analyze the balance sheet. Look for receivables from officers, or unusual increases in assets or liabilities.

4.76.26.13 (01-27-2011) Concluding The Examination

- (1) There are several determinations to be made based on the material and information gathered during the pre-audit and field examination phases of the audit. These include:
 - a. Revocation,
 - b. Change of exemption code section (e.g. §501(c)(19) to §501(c)(4)),
 - c. Unrelated business income tax,
 - d. Employment taxes,
 - e. Withholding taxes, and
 - f. Gaming taxes.

Note: Even if an organization loses exemption, the entity would still be subject to employment, withholding, and/or gaming taxes.

4.76.26.13.1 (01-27-2011) Revocation of Exempt Status

- (1) Factors giving rise to a revocation of the exemption of a veterans' organization include:
 - Failing the membership test under §501(c)(19),
 - Operating a bar as a substantial activity (§501(c)(4)),
 - Exceeding the non-member and/or investment income limits of §501(c)(7),
 - Failing to provide any insurance benefits under §501(c)(8),
 - Having members with no fraternal connection (social members) (§501(c)(8), §501(c)(10)),
 - Active conduct of unrelated trade or businesses (§501(c)(2)), and
 - Organized after 1880. (§501(c)(23)).
- (2) Inurement will also prevent exemption under IRC §§501(c)(4), 501(c)(7), and 501(c)(19).

4.76.26.13.1.1 (01-27-2011) Agreed Revocation

- (1) For an agreed revocation:
 - a. Discuss the issue with the taxpayer fully to verify that they will agree.

- b. Issue a report using Letter 3610, Forms 886-A, 4621-A, and 6018-A. Provide the taxpayer with 30 days to respond.
- c. Prepare Forms 2363-A for revocation. The first Form 2363-A will eliminate the exempt status, while the second Form 2363-A will change the filing requirement to Form 1120 or Form 1041 (trusts).
- d. Prepare a Form 1120 (or 1041) conversion package. See IRM 4.75.31, Procedures for Processing Revocations and Conversions of 990 to 1120 for complete instructions.
- e. Close the case to Mandatory Review, through the manager on RCCMS.

4.76.26.13.1.2
(01-27-2011)
**Unagreed Revocation
Procedures**

- (1) If not otherwise excluded from Fast Track Settlement, issue a report of preliminary findings (draft RAR), with a drafted cover letter, Forms 886-A, 6018-A, and 14017. Issue with Publication 4539. Allow 30 days for a response.
- (2) For cases not entered into the Fast Track Settlement process, issue the final report using Letter 3610, Forms 886-A, 4621-A, and 6018-A. Provide the taxpayer with 30 days to respond.
- (3) Prepare Form 2363-A for changing the filing requirement to Form 1120 (or Form 1041) and revocation..
- (4) Prepare a Form 1120 (or 1041) conversion package. See IRM 4.75.31, Procedures for Processing Revocations and Conversions of 990 to 1120 for complete instructions
- (5) Close the case to Mandatory Review, via management on RCCMS.

4.76.26.13.2
(01-27-2011)
**Unrelated Income Tax
(UBIT)**

- (1) For cases involving unrelated business income:
 - a. If not already open on RCCMS, obtain manager permission to open the Form 990-T for each year under examination on RCCMS. Unfiled Forms 990-T will be opened on RCCMS using push code 036.
 - b. Verify any amounts reported on Form 990-T, if filed, for accuracy.
 - c. Identify all sources of UBI (non-member bar sales, non-member gambling, advertising, etc.)
 - d. Determine the amount of direct expenses to be applied to the UBI.
 - e. If amounts from the gaming accounts have been expended to subsidize the organization's other activities, calculate the lawful purpose expense deduction to be applied against the taxable gaming revenue.
 - f. Using the square footage of the facility, the days of operation, or other methods of allocation of fixed expenses, calculate the depreciation, insurance, and utilities to be deducted.
 - g. Deduct the specific deduction (not to exceed \$1,000), if not already claimed on the Form 990-T. Applies when there is not a net operating loss.
 - h. Input the adjustments into RGS to calculate the tax and generate a Form 4549 with attachments.
- (2) For an agreed adjustment to the Form 990-T:
 - a. Discuss the adjustment fully with the taxpayer to determine whether they will agree to the adjustment.
 - b. Prepare a report of examination, issued via Letter 3621, Forms 886-A, and 4549.
 - c. Collect payment at the time of agreement. If taxpayer indicates an inability to pay the tax due at closing, alternative payment methods should be

discussed. An installment agreement should be offered if the taxpayer meet the requirements. Form 9465, Installment Agreement Request, can be used to solicit a payment agreement. See IRM 4.10.7.5.6.

- d. Process any received payments using Form 3244-A. Send the payment with the voucher to the Ogden Service Campus within 24 hours of receipt of payment
- e. When closing agreed cases, prepare Letter 3607, to be accompanied by a copy of the Form 886-A and a copy of the signed Form 4549. The case will be closed to ESS, via management on RCCMS.

(3) For an unagreed adjustment to the Form 990-T:

- a. If not otherwise excluded from Fast Track Settlement, issue a report of preliminary findings (draft RAR), with a drafted cover letter, Forms 886-A, 4549, and 14017. Issue with Publication 4539. Allow 30 days for a response.
- b. For cases not entered into the Fast Track Settlement process, issue the final report using Letter 3621, Forms 886-A, and 4549-A. Provide the taxpayer with 30 days to respond.
- c. Close unagreed cases to Mandatory Review at the end of the 30 day period. For short statute cases, statutory notice procedures may need to be followed.

(4) For employment tax cases, see the list below for the specific IRM procedures to follow:

- Worker classification: IRM 4.23.5, 4.23.6, 4.23.8
- Tip reporting: IRM 4.23.7
- Taxable fringe benefits not included on Forms W-2: IRM 4.23.5.11

4.76.26.13.3
(01-27-2011)

Withholding Tax Issues

(1) For withholding tax issues, such as non-filed Forms W-2G:

- a. Identify all payouts giving rise to a Form W-2G filing requirement.
- b. Request the organization to obtain the taxpayer identification numbers of the winners. Form W-9 may be used for this purpose.
- c. Obtain delinquent filed Forms W-2G from the organization.
- d. Prepare Forms 4668, 4666, and 2504 to assess backup withholding on the organization for any Forms W-2G not obtained. (For thresholds, see IRM 4.76.26.10.2.)
- e. Prepare Forms 4668, 4666, and 2504 to assess withholding for any amounts not regularly withheld when prizes for pull-tabs or other lottery style games equal or exceed \$5,000.
- f. If reports have been prepared under steps (d) or (e), obtain manager permission to open Form 945 on RCCMS. Unfiled Forms 945 will be established with push code 036, and MFT 16.
- g. Discuss with the taxpayer whether they will agree to the withholding taxes.

(2) For agreed withholding tax cases:

- a. Issue a report of examination using Letter 3596, with Forms 886-A, 2504, 4666, and 4668.
- b. Collect payment at the time of agreement. If taxpayer indicates an inability to pay the tax due at closing, alternative payment methods should be discussed. An installment agreement should be offered if the taxpayer meet the requirements. Form 9465, *Installment Agreement Request*, can be used to solicit a payment agreement. See IRM 4.10.7.5.6.

- c. Process any received payments using Form 3244-A. Send the payment with the voucher to the Ogden Service Campus within 24 hours of receipt of payment.
 - d. Prepare Letter 3607, to be accompanied by a copy of the Forms 886-A, 4666, 4668, and a copy of the signed Form 2504. The case will be closed to ESS, via management on RCCMS.
- (3) For unagreed withholding tax cases:
- a. If not otherwise excluded from Fast Track Settlement, issue a report of preliminary findings (draft RAR), with a drafted cover letter, Forms 886-A, 2504, 4666, 4668, and 14017. Issue with Publication 4539. Allow 30 days for a response.
 - b. For cases not entered into the Fast Track Settlement process, issue the final report using Letter 3596, Forms 886-A, 2504, 4666, and 4668. Provide the taxpayer with 30 days to respond.
 - c. Close unagreed cases to Mandatory Review at the end of the 30 day period. For short statute cases, statutory notice procedures may need to be followed.

4.76.26.13.4
(01-27-2011)
Gaming Excise Taxes

- (1) Gaming excise tax issues involve the sale of pull-tabs, instant bingo, raffles, lottery tickets and other non-bingo wagers to non-members (or social members if not defined in the bylaws.) For gaming excise taxes:
- a. Verify whether Forms 730 were filed by the organization.
 - b. Verify whether Forms 11-C were filed by the organization and all liable agents (employees who sold the taxable pull-tabs or other wagers.)
 - c. For filed Forms 730, verify that the taxable gross receipts matches the total gross receipts collected from all non-bingo gaming open to the public. Such amounts will already have been reported to the state on monthly or quarterly reports.
 - d. Have the agents (employees) who are liable for Forms 11-C obtain employer identification numbers via the online Form SS-4 at <https://sa1.www4.irs.gov/modiein/individual/index.jsp>.
 - e. For delinquent Forms 730 or 11-C, or underreported taxes, obtain manager permission to open the modules on Reporting Compliance Case Management System (RCCMS). Forms 730 are monthly returns, while Forms 11-C have an annual tax period ending in July for master file purposes.
 - f. Prepare a report of examination using Forms 886-A and 5384, using Form 2769 to compute deposit penalties, if applicable. Instructions for completing Form 5384 are located at IRM Exhibit 4.76.26-1
 - g. Discuss with the taxpayer(s) whether they will agree to the gaming excise taxes.
- (2) For agreed gaming excise taxes (Form 730 and/or 11-C):
- a. Issue the report of examination using a drafted letter modeled on Letter 950-E, sent certified mail, with the prepared Forms 886-A and 5384. Include Form 2769 if penalties are to be assessed for failure to deposit.
 - b. Collect payment at the time of agreement. If taxpayer indicates an inability to pay the tax due at closing, alternative payment methods should be discussed. An installment agreement should be offered if the taxpayer meet the requirements. Form 9465, Installment Agreement Request, can be used to solicit a payment agreement.

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- c. Process any received payments using Form 3244-A. Send the payment with the voucher to the Cincinnati Service Campus within 24 hours of receipt of payment.
 - d. Prepare Letter 3607, to be accompanied by a copy of the Form 886-A, and a copy of the signed Form 5384. The case will be closed to ESS, via management on RCCMS.
- (3) For unagreed gaming excise taxes (Form 730 and/or 11-C):
- a. If not otherwise excluded from Fast Track Settlement, issue a report of preliminary findings (draft RAR), with a drafted cover letter, Forms 886-A, 2504, 5385, and 14017. Issue with Publication 4539. Include Form 2769 if penalties are to be assessed for failure to deposit. Allow 30 days for a response.
 - b. For cases not entered into the Fast Track Settlement process, issue the final report using the drafted cover letter modeled on Letter 950-E, Forms 886-A, 2504, and 5385. Include Form 2769 if penalties are to be assessed for failure to deposit. Provide the taxpayer with 30 days to respond.
 - c. Close unagreed cases to Mandatory Review at the end of the 30 day period. For short statute cases, statutory notice procedures may need to be followed.
- (4) If the case is to be closed as a no change, prepare Letter 3594 and close following the procedures outlined in IRM 4.76.16, Case Closing Procedures.

Exhibit 4.76.26-1 (01-27-2011)**Instructions For Completing Form 5384, Excise Tax Examination Changes and Consent to Assessment & Collection**

The following are instructions for Form 5384 and 5385:

Field Title:	What To Enter:
Name and address:	Show current address
Social Security or Employer Identification Number:	Use the organization's EIN or agent's EIN
Form Number (5385):	Form 730 or 11-C (Only applicable for 5385)
Person with whom examination changes were discussed:	Self explanatory
Period Ended:	Input tax period in MM/DD/YYYY format.
IRS No. (5384) / IRS No. or CRN (5385):	Form 730: 198, Form 11-C: 197
Kind of Tax:	WAG
Correct Liability (5384) / Corrected Tax Liability per Exam (5385):	Total amount of tax per tax period determined
Previous Assessment (5384) / Tax per Return or Previous Assessment (5385):	Amounts as reported, if any
Tax (5384) / Tax Due or (Overpayment)(5385):	Difference between exam and reported amounts
Penalties:	Input any penalties computed for the taxes
Total (5384) / Total Tax & Penalties Due or (Refund) (5385):	Add the tax due to the penalties
Other Information:	See below
Examiner's Signature:	Self explanatory
District (5384)/ SB/SE Excise Territory (5385):	Replace with TE/GE EO Exam Area using Adobe Touch Up Text tool
Grp (5385):	Input group number

Other Information:

Statements should be included in the "Other Information" section of the report as needed. If additional space is needed, use Forms 886-A and add "See Forms 886-A attached". Below are examples of statements that should be used to clarify the examination results.

- a. For Form 5384, identify the type of form (730 or 11-C).
- b. Statement on corrected or revised reports such as "This report supersedes report dated _____";
- c. References to attachments.
- d. Statements regarding the disposition of claims.
- e. Statement regarding the application of any penalties or additions to tax (or reference to attachments). Include the IRC section, title of the penalty, and the dollar amount.
- f. Statement regarding the application of IRC §6404(g) (suspension of interest provisions) and the date on which the notice was provided. See IRM 4.10.8.13.12.

Exhibit 4.76.26-1 (Cont. 1) (01-27-2011)

Instructions For Completing Form 5384, Excise Tax Examination Changes and Consent to Assessment & Collection

Only taxes reported on the same type of return should be reflected on Form 5384. For example, if a Form 720 and a Form 11-C are examined for the same taxpayer, two Forms 5384/5385 will be required.