

**MILITARY SPOUSE CLUB (MSC)
TAX AND REGULATORY LEGAL REFERENCE GUIDE
PROVIDED BY THE COUNCIL FOR MILITARY SPOUSE CLUBS (CMSC)**

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NOTES

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INTRODUCTION

“Alone we can do so little; together we can do so much.” –Helen Keller

Historical Context

Before social media and cell phones, military spouses first thrived in social networks established on military bases through MSCs. No two MSCs are identical. Some military bases have only one combined MSC for officers and enlisted members’ spouses, while other bases continue to segregate their clubs based on rank as was historically typical. Some MSCs are formed with charitable goals in mind, while others are focused on social activities; some even include both charitable and social missions. Some MSCs are more sophisticated and operate thrift shops or gift shops. However, almost all are still run exclusively by military spouses.

While the operations and purposes of many MSCs has changed in the past 70 years or more, the legal sophistication of most MSCs has struggled to keep up. Most MSCs are formed as unincorporated associations, leaving members open to personal liability. Many, but not all, are federally recognized as tax exempt organizations under the Internal Revenue Code of 1986, as amended (the “**IRC**”), as § 501(c)(3) or § 501(c)(7) tax exempt organizations. However, many often fail to comply with governing requirements and operational matters restricting the operations of charitable entities. While many MSCs have board transition binders, few have engaged attorneys to assist with addressing tax and legal requirements for operating an exempt organization. CMSC seeks to help MSCs obtain access to some of the legal information necessary to address the risks and benefits of continuing to operate MSCs in the same manner as clubs have done for many decades.

What This Manual Is And Is Not Intended For

This guide provides a general overview of a variety of areas affecting the federal, state, and base installation tax and regulatory compliance of MSCs. It is intended to be used only as a guide, and is structured to help MSCs work from foundational legal issues (type of entity) through both federal and state tax exempt status, as well as federal and state tax and regulatory compliance. It also addresses base installation general requirements for operating private organizations on military bases. MSCs should always conduct their own research and seek legal counsel to determine how the information in this guide may apply to its operations, governance, and activities.

This guide is not geared specifically towards other types of organizations military spouses volunteer with such as Family Readiness Groups³, or Booster Clubs. However, many of the same principles for nonprofit requirements and governance may be applicable to those types of organizations.

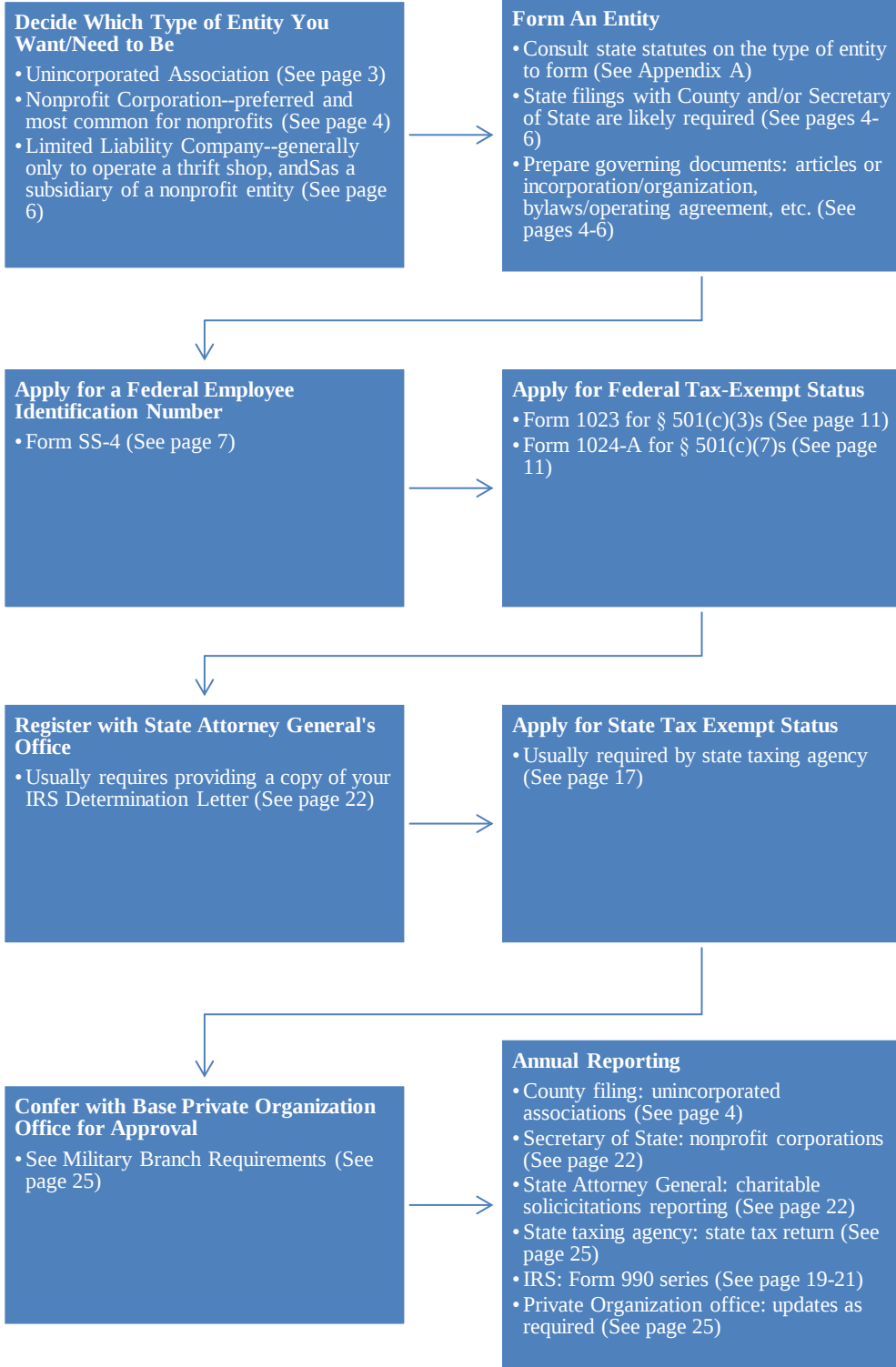
³ Here is a potential reference guide for FRGs: <https://sill.armymwr.com/application/files/2215/6087/2702/Sill-FRG-Handbook.pdf>



COUNCIL

FOR MILITARY SPOUSE CLUBS

FLOWCHART OF PROCEDURE FOR FORMING



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The Council for Military Spouse Clubs is a Section 501(c)(3) tax-exempt charitable organization under the Internal Revenue Code and is a registered nonprofit corporation in Colorado. EIN 86-1552088.

I. TYPES OF STATE LEGAL ENTITIES AND FORMING AN ENTITY

MSCs must first start with the basic building blocks and determine what type of state legal entity they are or aren't. Most MSCs are formed as unincorporated associations (by default due to lack of incorporation) or nonprofit corporations. Some have divisions which are or could be recognized as limited liability companies. Because each state has its own requirements for each of these types of entities, an appendix of the 50 states' relevant statutes governing the formation and operation of unincorporated associations, nonprofit corporations, and limited liability companies is attached hereto as **Appendix A**.

A. Choosing a Name for the Entity

One of the first steps in deciding to form a MSC is to choose a name. In choosing a name, it is wise to consult applicable Department of Defense requirements in DoDI 1000.15, which provide that a non-federal entity can use the name or abbreviation of a DoD component, organizational unit, or installation provided that the non-Federal entity obtains approval from the DoD and that the name does not mislead members of the public to assume the entity is a unit of the DOD. DoDI 1000.15 also provides that the non-Federal entity must prominently display a disclaimer on all printed and electronic media mentioning the entity's name and confirming that the entity is not part of the Department of Defense.

In addition to Department of Defense requirements, if the MSC believes it will formally incorporate as a nonprofit corporation (or subsidiary LLC of a nonprofit corporation), the MSC will need to check with the state in which it will form to confirm that the name does not match the name of any other entity formed in that state. Every state's laws require new business names to be distinguishable from the names of existing business entities in that state. Typically, the state's Secretary of State or state Corporation Commission website will include a search function so that available business names can be confirmed before formation documents are filed with the state.

If the MSC believes it may want to seek nationwide trademark protection by registering the name with the U.S. Patent and Trademark Office, the MSC can also search the USPTO's online database for trademarked business names that are similar to the name the MSC seeks to choose. If a business name is too similar to the name the MSC wants to use, the MSC may violate someone else's trademark by choosing that name. If the MSC needs assistance or an analysis of trademark issues, it is best to contact an attorney familiar with trademark law.

B. Unincorporated Association

Overview: Most, if not all MSCs CMSC is familiar with are formed as unincorporated associations in which membership determines rights and privileges. Generally, these can be formed simply by having more than two individuals working for a common purpose. Unlike nonprofit corporations, there is little oversight from state governments on the formation and operation of unincorporated associations. As a result, it may be difficult or impossible to tell from state records whether or not a MSC is officially formed as an unincorporated association.

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Advantages: In many states, a constitution, bylaws or other formation document may not even be required to form an unincorporated association. This lack of formality is often helpful to MSCs who experience significant leadership transitions or are newer and have not developed a more structured way of operating in order to comply with the filing requirements for nonprofit corporations.

Disadvantages: The most significant disadvantage of unincorporated associations is that the lack of a corporate entity structure means each of the association's members has personal liability for the actions and omissions of the association. While the risk of liability may be small, sometimes the harm these associations can cause is very significant. For example, thrift shops could sell products which injure a consumer, or a member could injure themselves (or someone else) while at a social event. While having liability insurance and/or directors and officers insurance helps with these types of issues, insurance does not cover all types of claims, including breach of contract, fraud, etc.

The personal liability of members could also become an issue in the event the unincorporated association has failed to file tax returns, or has obtained federal tax exempt status, and a tax audit results in a significant tax payment being required. Given the general lack of attention to federal tax-exempt entity requirements by many MSCs, this potential risk may be even more significant than most MSCs appreciate.

Additionally, some states require a filing of the names and addresses of the members of the unincorporated association in county or state records. This may be perceived as overly intrusive, and is likely a requirement most unincorporated associations do not follow.

Dissolving an Unincorporated Association: Depending on state statute requirements, an unincorporated association is generally dissolved by a resolution approving dissolution of the entity (passed by the Board of Governors or equivalent governing entity) and distributing the assets of the unincorporated association. Where tax exempt status has not been granted, the assets generally are required to be distributed to the members where each member acquires its pro-rata ownership interest in such asset. Where tax exempt status has been granted, distributions may be limited to another § 501(c)(3) entity, for example. See also the discussion below on "Special Circumstances" for conversion of tax-exempt entities.

C. Nonprofit Corporation

Overview: The state nonprofit corporation is likely the most common form of entity chosen today for most nonprofit organizations outside of MSCs. Instead of being formed by drafting a constitution, nonprofit corporations are often formed by filing "Articles of Incorporation" with a state agency, and by preparing separate bylaws governing the actions of the board of the nonprofit. Refer to **Appendix A** for a list of each state's nonprofit corporation statutes for further information. *However, most installation PO Offices will ask for a "Constitution" rather than "Articles of Incorporation." Essentially it serves the same purpose yet called two different things.

If the nonprofit corporation ultimately plans to seek § 501(c)(3) tax exempt status, the Articles of Incorporation and bylaws will need to include specific IRS-required language to signify

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that it is operated for purposes consistent with § 501(c)(3). This IRS-required language is available in Publication 557 and includes three provisions: (1) purposes statement, (2) no private inurement statement, and (3) dissolution provision.

To check and see if a MSC is organized under state law as a nonprofit corporation, search the state's Secretary of State business records (or other administrative agency in charge of business filings) for the state in which the MSC is located. Those records can typically be searched by the name of the organization and/or director names to locate entity records. MSCs can also contact the Secretary of State's office to request complete copies of the filing documents including Articles of Incorporation and annual filings.

Advantages: Unlike unincorporated associations, nonprofit corporations generally provide liability protection for actions of the nonprofit. As a result, members, or "friends of", the nonprofit as the case may be, are not responsible for paying back debts of the nonprofit corporation should liabilities exceed assets at some point. Additionally, in applying for many grants, and in order to gain public trust, the use of a nonprofit corporation may be advisable or required.

Disadvantages: The disadvantages to forming a nonprofit corporation are relatively few. First, there are necessary forms to file in most states to initially form the nonprofit corporation, and also to maintain "good standing" by filing often annual reports. In clubs with significant turnover, the filing of annual reports may require extra attention to avoid falling out of compliance. Second, there is often a small fee (\$25-\$100ish) for initial formation, and often an even smaller fee for annual report filings (\$10-\$50ish). This is not a significant cost given the advantage of personal liability protection, however, it is a cost that must still be budgeted for.

State of formation: Regardless of the state a MSC is in, it can choose to incorporate as a nonprofit corporation in any state. States such as Delaware, Wisconsin, Arizona, Wyoming, and Nevada are among the best known to have fewer regulations for nonprofits, so those states may be most advantageous for MSCs. However, forming a nonprofit outside the state a MSC is in will likely result in the need to file reports in both the formation state, and the state it operates in. As a result, it is likely easiest for most MSCs to incorporate in the state in which they are located to avoid unnecessary complications.

Member vs. Non-Member Nonprofit Corporations: Depending on the applicable state law, most nonprofit corporations can be formed with or without members. However, because nonprofit corporations by their nature have no "owners", it is generally not advisable to form membership-based nonprofit corporations; member-based nonprofit corporations can suffer from member-driven strife, and additional paperwork and formalities may be required. It is likely more typical for nonprofits, generally, to not have members unless they are social organizations (i.e. Social-oriented MSCs which might seek tax exempt status under IRC § 501(c)(7)) or controlled by a parent entity through an affiliation agreement. Other charitable nonprofit organizations can easily help foster a sense of "membership" instead by creating a category of donors called something similar to "friends of" the nonprofit, and instead, all voting on matters of the nonprofit is directed exclusively by the board of directors.

D. Limited Liability Company

A limited liability company (“**LLC**”) is more similar to a nonprofit corporation than it is to an unincorporated association because it is also a separate legal entity. LLCs are formed by filing information (usually Articles of Organization) with most states’ Secretary of States offices and entering into an “Operating Agreement” (similar to bylaws used by most nonprofit corporations). Please refer to **Appendix A** for reference to each state’s LLC statutes. LLCs can have one or more owners, but generally only have one owner in the context of their use by nonprofits. If there is only one owner of the LLC, all income of the LLC will be reported on the owner’s income tax filings; this structure is called a “pass-through entity.” Additionally, where there’s only one owner, the LLC is known as a “subsidiary” of the owner since it is wholly owned by one owner and is a separate legal entity.

Although LLCs are commonly known for being associated with for-profit businesses, it is generally only advisable for tax exempt organizations to have subsidiary LLCs where (1) the activities of the LLC will be considered tax-exempt and will not generate unrelated business income tax (“**UBIT**”), or (2) the tax exempt organization is willing to pay UBIT on its income, but the LLC activities are not so significant to jeopardize the nonprofit status. Remember, tax exempt entities are granted tax exempt status because of the requirement to primarily conduct its operations consistent with its tax-exempt purposes; the non-tax exempt purposes of the entity cannot be “substantial.”

For MSCs, the most logical choice for use of a subsidiary LLC would be for the operation of a thrift shop. Generally, the structure would be to have a 501(c) nonprofit corporation MSC as the sole member of an LLC that operates a thrift shop. This structure is akin to the MSC being the “parent” entity and the thrift shop being the “subsidiary” entity owned by the MSC. The advantage of using this structure is two-fold: (1) it creates additional liability protection for the activities of the thrift shop (i.e. from product liability claims on re-sold goods) which will not only protect the MSC entity, but also its members, and (2) from an accounting perspective, it helps keeps the thrift shop activities separate, while still providing “pass through” income for use in charitable activities of the owner (i.e. scholarships).

Thrift shops generally are able to be considered tax-exempt because IRC § 513(a)(3) does not consider the selling of merchandise, substantially all of which has been donated, as “unrelated trade or business”. And, if the thrift shop LLC is wholly owned by a MSC which already has its own tax-exempt status, generally the thrift shop will not need to apply for separate tax exempt status because of a tax concept recognizing LLCs as “disregarded entities.” The finances of the thrift shop LLC would then be reported as part of the § 501(c) MSC’s annual tax returns; the LLC would not need to file a separate return.

The exact scale by which MSCs can determine “substantially all” of the donated goods are received by the thrift shop is unclear. Treas. Reg. § 1.514(b)-1(b)(1)(ii) defines “substantially all” as equal to 85% for purposes of the debt-financed income rule, and similarly FSA 200035003 also echoes the use of an 85% rule for determining whether property is substantially related to exempt purposes.

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Taking things one step further, “gift shops” (which could also be formed as LLCs owned by an MSC nonprofit corporation) that derive income from the re-sale of purchased goods on their face would not appear to qualify as receiving tax-exempt income like thrift shops. Gift shops may instead need to consider other Code sections which might apply to grant tax exempt status. For example, IRC § 513(a)(1) also provides that a trade or business carried on where “substantially all” the work is performed by volunteers without compensation will not generate UBIT income. Gift shops or thrift shops might also need to consider whether the sale of consigned goods would be considered “donated”, or instead, whether these activities would qualify as tax-exempt income because they are run by “substantially all” volunteers. If a gift shop does not operate in a manner that enables it to fit into a tax exempt exception for unrelated business income (such as operated by substantially all – 85% - volunteers), the gift shop runs a significant risk that if the IRS audits the MSC operating the gift shop, the IRS will reclassify the gift shop’s income as not tax exempt and will impose taxes, penalties and interest on the gift shop’s net income.

II. APPLY FOR A FEDERAL EIN NUMBER

Regardless of the type of entity chosen for a MSC, the entity is required to have a federal Employer Identification Number (“EIN”). An EIN number can be requested very easily online at the IRS website.⁴ A paper Form SS-4 can also be filed with the IRS to request an EIN. The only restriction is that the EIN must be requested by a “responsible party” defined for purposes of forming MSCs as “...the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the entity and the disposition of its funds and assets. The ability to fund the entity or the entitlement to the property of the entity alone, however, without any corresponding authority to control, manage, or direct the entity (such as in the case of a minor child beneficiary), does not cause the individual to be a responsible party.”⁵ Often the president of the MSC is the best person to be designated the “responsible party” for the EIN. Updates to the “responsible party” name can be sent to the IRS as necessary.

The only practical exception to the requirement to obtain an EIN is for wholly-owned subsidiary LLCs; as disregarded entities, an LLC with only one owner can use the same EIN as the owner *unless* the LLC has employees. If the LLC has employees, the LLC will need to apply for its own EIN.

III. NONPROFIT VS. TAX EXEMPT

Many people confuse terminology for charities and describe nonprofit organizations and tax-exempt organizations as one and the same. Take for instance the potential that an entity could organize under state law as a nonprofit corporation under the state’s nonprofit corporation act, but then this same entity could fail to apply for federal tax-exempt status with the IRS. Only entities

⁴ <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>

⁵ IRS website: <https://www.irs.gov/businesses/small-businesses-self-employed/responsible-parties-and-nominees> (last accessed March 8, 2019). For a MSC the “responsible party” could be the President and/or Chair of the Board.

with tax exempt status with the IRS can provide donors with the benefit of tax-deductible donations. These types of entities appropriately label themselves as nonprofit organizations, but this may be misleading to donors who believe the entity to be capable of receiving tax-deductible donations.

A. Checking to see if a MSC has federal tax-exempt status

Many MSCs advertise their tax-exempt status to potential members as a § 501(c)(3) or § 501(c)(7) organization, and may even file a Form 990 tax information return. However, it is possible that in the passage of time, records from the IRS recognizing an organization's tax-exempt status may never have been obtained, or may have been lost. The best way to determine if a MSC has obtained federal tax-exempt status is by requesting a copy of the IRS determination letter recognizing the entity as tax exempt by filing a Form 4506-A⁶ with the IRS. There is a small fee associated with requesting records, but if the cost is over \$250.00, the IRS will request payment in advance. This same form can also be used to request a copy of the Form 1023 or 1024 used to apply for tax exempt status.

Sometimes MSCs were formed so long ago that the IRS will search their archives and cannot locate a copy of the determination letter; in this instance, the IRS may send a letter stating they have no such record and describing whether a new application for tax exempt status is necessary or not.

B. Advantages to applying for federal tax-exempt recognition

Entities that successfully obtain tax-exempt status from the IRS are exempt from federal corporate income taxes. However, tax-exempt entities are still required to withhold payroll taxes for any employees. Tax-exempt entities also must pay federal and state taxes on income from activities unrelated to their mission, referred to as UBIT.

Obtaining tax exempt status also has non-tax benefits for the organization. The general public is very familiar with § 501(c)(3) organizations and may be more likely to recognize the legitimacy of such entities, and further may be more likely to donate money because of potential charitable deductions for the donor's personal tax reporting purposes. Additionally, obtaining tax exempt status may be a prerequisite to applying for grants with many organizations.

C. Disadvantages to applying for federal tax-exempt recognition

Recognition as a federal tax-exempt entity is not necessarily desirable for every MSC. While clubs with federal tax-exempt status enjoy the benefit of having income be free from federal taxes, this benefit comes with the cost of needing to file additional tax forms, potential liability in the event tax exempt status is revoked, and perhaps even a higher risk of federal tax audits. MSCs should also consider whether their leadership transition process is sufficient to support ongoing federal tax reporting that comes with being a tax-exempt entity. As a whole, however, CMSC

⁶ July 2017 version: <https://www.irs.gov/pub/irs-pdf/f4506a.pdf>. Instructions for filing this form can be found here: <https://www.irs.gov/pub/irs-pdf/i4506a.pdf>.

strongly recommends MSCs consider filing for federal tax exempt status with respect to at least charitable-oriented spouse clubs to assist with raising funds and providing donors charitable deductions.

D. State tax exempt status

On the state level, it is necessary to determine whether an entity granted federal tax-exempt status is required to pay state income tax and other state and local taxes such as sales and use and property taxes. The entity should examine the state's Secretary of State and Department of Taxation websites⁷ to understand the various requirements. Many states have the same requirements as the IRS for tax-exempt status, but laws vary in states and localities in terms of what taxes are exempt and how to apply for exemption. In some states, for example, the entity will be automatically exempt from some state taxes but must submit a separate application for exemption from other state or local taxes. The state sales and use tax exemption requirements will require careful attention particularly for MSCs that operate thrift stores or gift shops to raise money for scholarships and charitable contributions.

While the majority of states automatically grant some tax exemption to § 501(c)(3) nonprofits, for other types of tax-exempt nonprofits, the state tax exemptions might be more complicated. In general, to obtain state tax exemption, the entity will need to submit an application form and several items in support of the application, such as the IRS Determination Letter and/or IRS Form 1023 or 1024, its articles of incorporation and/or bylaws, and financial statements and/or Form 990. Some states also require renewal filings to retain state tax-exempt status annually or every 3 or 5 years. A MSC may also need to register its organization with the state's Attorney General's office or department responsible for charitable solicitation registration.

In many states, organizations that have § 501(c)(3) status do not have to file state income tax returns, but the state's Department of Taxation website should be consulted to confirm whether any notification or application to the state is required, even if a full tax return is not required.

IV. TYPICAL TYPES OF MSC TAX-EXEMPT ENTITIES

There are more than 30 types of nonprofits eligible for federal tax exemption, but most nonprofits seek § 501(c)(3) status as charitable organizations. In determining whether to grant an entity tax-exempt status, the IRS closely evaluates the "purpose" clause in the entity's articles of incorporation. The IRS provides specific language⁸ that it is looking for in the purpose clause to indicate the charitable purpose of the organization. Indeed, the IRS provides extensive guidance – for free – on its website, including online training⁹ for how to apply for § 501(c)(3) status, navigating the required forms, maintaining tax-exempt status, and other in-depth topics. A nonprofit granted tax-exempt status will receive a "determination letter" or "recognition letter"

⁷ <https://www.irs.gov/charities-non-profits/state-links>

⁸ <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations>

⁹ <https://www.stayexempt.irs.gov/home/starting-out/starting-out>

from the IRS, which the nonprofit can then submit as proof of its tax-exempt status to its state and local governments.

A. § 501(c)(3) entities

Qualifications: § 501(c)(3) entities are probably the most common form of tax-exempt entity. These entities are generally organized and operated exclusively for religious charitable, scientific, testing and for public safety, literary, or educational purposes. Most MSCs with § 501(c)(3) status likely operate a thrift shop to raise funds for scholarships or other endeavors to support military service members and their dependents.

Deductibility issues: One of the largest advantages of applying for § 501(c)(3) status is the deductibility of donations for donors. However, there are limits placed on deductibility depending upon whether the entity is classified as a “public charity” (generally with 33 and 1/3 percent of its funding coming from the public) or “private foundation” (generally supported by those with decision-making power in the entity). Most MSCs are likely to be classified as public charities due to the broad scope of donors who support the entity; these donors can deduct any donations made to the club up to 60% of the donor’s adjusted gross income. Recent federal tax law changes may affect the advantages of tax-deductible donations due to the increase in the standard deduction and elimination of most itemized deductions.

B. § 501(c)(4) entities

Qualifications: § 501(c)(4) entities are civic leagues and social welfare organizations. Examples include homeowners associations, community sports leagues, and political action committees. Unlike § 501(c)(3) entities, § 501(c)(4)s can engage in lobbying efforts. While some MSCs may have been formed or intended to be run as § 501(c)(4) entities, it would seem unlikely this tax-exempt status is appropriate for the operations of most military clubs who are either/both social and/or charitable by nature.

Deductibility issues: Generally, contributions to § 501(c)(4) entities are not deductible to donors unless the donor is a business and the donation is made as an ordinary and necessary business expense.

C. § 501(c)(7) entities

Qualifications: § 501(c)(7) entities are generally social and recreational groups such as country clubs or college fraternities or sororities. In the instance of MSCs, these are typically the “social club” undertakings of the entity. § 501(c)(7)s are not required to undertake charitable activities unlike other forms of tax exempt entities, however, may from time to time engage in charitable activities as part of its social purpose.

Deductibility issues: Member dues for social clubs are generally not deductible for individual members. On the flip side, the entity must be careful to ensure no more than 35% of the entity’s revenue comes from non-member sources, which may occur if the entity engages in significant business-like or investment activities.

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MSCs operated as social clubs have evolved significantly. While many bases originally formed separate officer and enlisted spouses' clubs, many bases have moved to having only one social club (combined). Combined clubs must be careful not to engage in private inurement with more than one class of members. A difference in dues or fees is justified where there is a difference only in the rights to club membership, though the courts in some jurisdictions appear to provide for a *de minimis* recognition of a dues difference between \$30 and \$63.70.¹⁰

There also does not appear to be any guidance on setting dues for two classes of membership in which effectively one class of members subsidizes the cost for a second class of membership. Instead, combined clubs wishing to address income disparities between spouses of officers and enlisted servicepersons in combined clubs might consider (1) attempting to link membership classes to benefits derived (i.e. a base cost for all members, then optional costs for participation in a dinner group, a craft group, etc.), (2) encouraging officer's spouses to voluntarily subsidize the cost of enlisted members they may recruit to join the MSC (but not having the club logistically oversee this subsidy and exchange of payment), or (3) asking corporate sponsors (or third parties) to be available for subsidy requests by any potential member needing assistance with dues payments. Additionally, clubs could charge a set fee that is lower than previously set and allow for anyone to donate additional amount if they so desire in order to not single out any one class.

D. Other types of tax-exempt organizations

MSCs might also ask themselves whether they might qualify as a § 501(c)(6) entity. This type of entity, however, is geared towards those in a profession or line of business (for example, attorneys who form bar associations like MSJDN). MSC activities would not generally fall into this category because of the lack of a common type of employment or industry among the potential members.

E. National MSC with Local Chapters

MSCs, collectively, would be advised to consider working together nationally (or even internationally) and approaching an attorney to form a national tax-exempt organization, with local chapters (one chapter per base) similar to structures for fraternities and sororities. Though upfront this would take a significant amount of work, it may result in more support for transitioning leadership year to year. The national entity might consider applying for a federal group exemption letter; while this is more costly up front, the local chapters would have the benefit of being listed under the group exemption letter without needing to separately apply for federal tax-exempt status. The local chapters would continue to be separate entities for liability purposes, and governed locally, but would be required to maintain certain governing and operational requirements per a chapter agreement with the national organization.

¹⁰ See *Pittsburg Press Club v. United States*, 536 F.2d 572 (3d Cir. 1976).

V. APPLYING FOR FEDERAL TAX-EXEMPT STATUS

A. Form 1023 vs. Form 1024

Assuming a MSC has already determined which type of tax-exempt status to apply for, the next step is to file a form requesting recognition as a tax-exempt entity. If the entity will have annual gross receipts of not more than \$5,000, the entity may not be required to file a Form 1023, but it is still a good idea to file in the event circumstances change in the future, and for public recognition.

The IRS currently has two types of forms to apply for tax exempt status. The first is Form 1023 (or Form 1023-EZ for certain entities) used for recognition as a § 501(c)(3) entity, and the second is the Form 1024 used for all other types of tax-exempt organizations. Publication 557 (Tax-Exempt Status for Your Organization) contains lots of helpful information about filing for tax exempt status. The forms generally require entities to disclose certain information about their organization and operation as a nonprofit, their governance, and their finances. Entities applying for § 501(c)(3) status may also be eligible to apply for recognition using a newer Form 1023-EZ where the entity has assets of \$250,000 or less and annual gross receipts of \$50,000 or less.¹¹

B. Filing fees

MSCs may need to set aside funds or raise funds to apply for tax exempt status in order to save on taxes in the long run. Currently¹² the filing fees (known as a “**user fee**”) for application for recognition as tax exempt entities are as follows:

Form 1023: \$600

Form 1023-EZ: \$275 (must be paid through www.pay.gov when the application is filed)

Forms 1024 and 1024-A: \$600. File Form 1024-A to apply for tax exempt status under § 501(c)(4). File Form 1024 to apply for tax exempt status under § 501(c)(7).

The user fee amount is entered on Form 8718 and submitted with the determination letter application for § 501(c) status.

C. Retroactive nature of obtaining tax exempt status

MSCs who have been operating for some time without obtaining tax exempt status can obtain some relief when they file for tax-exempt status. Ideally tax-exempt status would be applied for shortly after the MSC is formed, but if not, when § 501(c)(3) tax-exempt status is recognized for the first time by the IRS, the recognition is retroactive for operations up to 27 months prior to

¹¹ See Rev. Proc. 2017-5, 2017-1 I.R.B. 230.

¹² These amounts are subject to change; for the latest user fee information, search for “user fee” on www.irs.gov. See, e.g. Rev. Proc. 2018-5, 2019-05.

applying for § 501(c)(3) status. It is not clear whether § 501(c)(7)s are eligible for retroactive recognition.

If the MSC has been operating for several years without tax exempt status and has failed to file annual corporate tax returns with the IRS despite earning income in excess of \$5,000 for each year, particularly when the club operates a thrift store or gift shop, the club should seek advice immediately from a tax attorney. Likewise, if the MSC discovers it has failed to comply with state-specific filing requirements, the club should seek advice from an attorney well-versed in nonprofit law. If the MSC has received any notice(s) from the IRS or state agencies, the club should also seek legal and/or tax advice to resolve those issues at the earliest opportunity.

VI. SPECIAL CIRCUMSTANCES

A. Reinstating after losing tax exempt status

Some MSCs may unfortunately face revocation of their tax-exempt status. This is likely to occur automatically under § 6603(j) when an entity fails to file annual tax returns for three consecutive years. In other circumstances revocation may occur when notice is sent to the entity by the IRS, perhaps after an audit of the entity's operations when the IRS determines the entity is no longer eligible for recognition as tax exempt.

When automatic revocation of tax-exempt status occurs due to the failure to file tax returns, the entity can apply for reinstatement by filing a new application for exemption, noting the entity was "automatically revoked", and paying the appropriate user fee. Assuming the IRS determines the entity meets the requirements for tax-exempt status, it will issue a new determination letter. The IRS will only reinstate the organization's tax-exempt status to the date of the revocation if the entity can establish reasonable cause for the failure to file annual tax returns.

B. Conversion from one type of § 501(c) to another

A MSC may decide that it is beneficial to convert to a different type of § 501(c) entity. This could occur if the club's operations change over time, new activities are undertaken such as a thrift shop or gift shop, or if it is discovered that the club should be tax-exempt under a different § 501(c) category than its current status.

Converting to a different § 501(c) category involves several complex steps that touch on state and federal law as well as IRS procedures. The process is dependent upon whether (1) the existing organization is an existing single entity and wishes to form a new organization or (2) the existing organization is part of a dual-entity structure affiliated with an existing § 501(c)(3) organization to which it wishes to contribute its assets.

Below are some examples of conversion strategies for entities that wish to convert either to or from § 501(c)(3) status. The IRS does not provide a simple re-designation process for existing § 501(c) groups to re-classify themselves under a new § 501(c) category. Accordingly, the club will have to form a separate legal entity as a nonprofit organization and then seek the desired § 501(c) tax-exempt status. Legal advice should be obtained due to the complexity of the process.

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1. General Procedure for Forming New Entity

If a MSC is thinking about converting an existing club into a different § 501(c) status, the MSC should first research how to form a new entity which will then become the organization classified under the new § 501(c) category.

First, evaluate the articles of organization existing for the club and determine if the articles of organization and other governing documents will need to be revised or created anew. For example, if the club is operating as a § 501(c)(7) entity and wants to obtain tax-exempt status under § 501(c)(3) instead, the club will likely need to draw up new articles of organization that contain the required exempt purposes language for § 501(c)(3) status.

Second, file the MSC's new articles of organization for the new entity with the MSC's state of incorporation. The MSC may also need to register its organization with the state's Attorney General's office or department responsible for charitable solicitation registration. The MSC will need a new federal EIN number and new state EIN numbers as well since it is forming a new legal entity.

Third, the MSC will need to prepare the required IRS forms for the new entity to seek § 501(c) tax-exempt status, which may involve the Form 1023 series or Form 1024 series, depending on which subsection of § 501(c) the MSC is seeking to fall under.

Fourth, the MSC will need to dissolve the old organization in accordance with the state laws governing the old organization and file appropriate documents with the IRS and state tax agencies, which may include final tax returns, distributing assets, obtaining tax clearance certificates, and preparing various notices of dissolution.

2. Single-Entity Conversion to § 501(c)(3)

The strategy of converting an existing single-entity recognized as a § 501(c)(4), (6), or (7) entity or an unincorporated organization into a § 501(c)(3) is somewhat risky because the Form 1023 the MSC would file for the newly established § 501(c)(3) entity will require detailed information regarding whether the new § 501(c)(3) entity is a successor organization receiving the assets of the prior § 501(c)(4), (6), or (7) or unincorporated organization.

The MSC will need to file a Schedule G (successor organization) with the Form 1023 for the new § 501(c)(3) if it could be interpreted as a successor organization to the prior organization. Schedule G is used by the IRS to determine whether the successor organization § 501(c)(3)'s creation resulted in financial benefits to organizations or individuals when the assets of the prior organization were transferred to the new organization seeking § 501(c)(3) status.

It is important to seek legal advice to ensure that the transfer of the assets from the prior entity to the new entity that will seek tax-exempt status has economic substance and does not appear to result in financial benefit to the members of the prior entity.

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3. Dual-Entity § 501(c) Entities Conversion to Single § 501(c)(3)

It may be possible if the club is operating both a § 501(c)(4) or (6) or (7) entity and a § 501(c)(3) entity to donate all of its assets to the § 501(c)(3) and then dissolve the prior § 501(c)(4), (6), or (7) entity. The bylaws of the § 501(c)(3) may need to be revised if the § 501(c)(3) is going to undertake any of the activities of the pre-existing entity that are permitted by its tax-exempt purposes. Also, care should be taken that the § 501(c)(3) does not assume any activities that would endanger its tax-exempt status or trigger unrelated business income tax liability.

A new Form 1023 would not need to be filed for since the § 501(c)(3) entity was pre-existing, but disclosures may need to be made on the § 501(c)(3) entity's annual information returns at both the federal and state levels regarding the details of the donation from the pre-existing entity. How that donation is characterized will matter to the tax treatment of the donation of assets to the § 501(c)(3).

4. Conversion of § 501(c)(3) Entity Into A Different § 501(c) Category

An existing § 501(c)(3) organization cannot change into a differently classified § 501(c) organization simply by filing paperwork with the IRS. IRS Revenue Procedure 2017-5 provides that if a § 501(c)(3) organization seeks to be classified under a different subsection of § 501(c), it must dissolve and re-form as a new entity. This process is complicated due to the dissolution requirements and how assets must be distributed on dissolution.

Ordinarily, a § 501(c)(3) must include in its governance documents a provision that upon dissolution all of its assets will be distributed for exempt purposes to another organization that is operated for § 501(c)(3) exempt purposes. However, if a § 501(c)(3) organization wants to be classified as a § 501(c)(4) organization, for instance, it cannot just distribute its assets on dissolution to the new § 501(c)(4) organization because a § 501(c)(4) organization is not operated for the same purposes as required under § 501(c)(3).

It may be possible for the § 501(c)(3) organization to make a grant to the § 501(c)(4) organization if the granted funds are restricted to use for purposes that meet § 501(c)(3) tax-exempt purposes tests pursuant to a written grant agreement. Legal advice should be obtained in all of these circumstances.

C. Separating a Combined Club Operating as One Entity With Two Tax Exempt Purposes

Some MSCs have evolved unintentionally over time to appear to have combined tax purposes; for example, a club with a “thrift shop” side, and a “social” side. Either side or both sides may have applied for federal tax-exempt status as a § 501(c)(3) or § 501(c)(7) entity at some point in time, but the key feature for these combined clubs is that both “sides” are run by the same governing board. Combined purpose clubs of this nature run significant legal and financial risk for a variety of reasons.

First, if tax exempt status has been granted to one of the “sides”, the operations of the other “side” may risk the tax-exempt status granted. For example, a § 501(c)(7) may be able to argue

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that as part of its social activities, it engages in § 501(c)(3)-like charitable volunteering activities. However, the reverse of this situation cannot be true; a § 501(c)(3) cannot say part of its charitable purposes includes funding social activities. If this type of a MSC were to be audited by the IRS, it is likely at least the § 501(c)(3) side would lose its tax exempt status; the members of the § 501(c)(3) (particularly if formed as an unincorporated association without liability protection of formation as a nonprofit corporation) could be required to pay taxes for any time period in which the IRS determines non-charitable activities were engaged in.

A second concern for combined clubs is a category of legal liability theories known as “alter ego” or “piercing the corporate veil.” These concepts generally say that the actions of one entity/person/side could be attributed to the activities of the other entity/person/side because of a lack of respect for the separateness of the entities/people/sides. For example, if a person was injured during a social club event, they may be able to successfully sue the thrift shop side of the club and recover the thrift shop club assets for satisfaction of a judgment. The concern is that without establishing separate governance, separate financial records, etc., the two sides must be held to be acting as one in the same entity. Because the separation of combined clubs is relatively easy to do (when club membership is open to suggestion), it is almost always advisable to run them as two separate clubs that work together to meet this mission of each club. **Technically it is “illegal” in the civil context regarding compliance with tax exempt statutes to continue to run an organization such as this as one entity.*

The advisability of having separate clubs is also dependent upon the practical ability of club leadership to separate the activities of the club and the availability of enough volunteers to form separate governing leadership boards. Combined clubs have often operated in such a manner for decades without consideration of the legal risks of doing so. Combined clubs therefore may want to consider ways in which they can separate the sides of the clubs into separate nonprofit corporations but have some limited cross-over in Board governance. The co-mingling of board governance can be difficult to structure to provide some level of shared communication, but a lack of complete control, so it is advisable to seek counsel from an attorney to discuss restructuring as parent-child entities or brother-sister entities. For example, it may make sense to have the social club formed as a parent entity with a thrift shop as a wholly-owned nonprofit or LLC subsidiary.

VII. GENERAL RESTRICTIONS ON TAX EXEMPT ENTITIES

A. Private inurement

Generally speaking, all tax-exempt entities are restricted from engaging in private inurement: using the entity as a way to individually benefit individuals who are involved in the governance and operations of the entity. While “inure” is not defined by the IRC, the Code requires § 501(c)(3)s to distribute “no part of the net earnings of which inures to the benefit of any private shareholder or individual”. Treas. Reg. § 1.501(a)(1)-(c) defines “private shareholder or individual” (commonly referred to as “insiders”) as “persons having a personal and private interest in the activities of the organization.”

The classic example of private inurement is using an entity’s funds and paying a director, founder, or officer compensation unrelated with the provision of any services. For MSCs, this is

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likely to manifest itself with having funds used to provide competitive scholarships for Board members or their relatives. Private inurement may also manifest itself where a MSC purchases goods from an insider in excess of the fair market value, or where insiders use the club's assets to further the insider's personal business endeavors. Another potential issue for private inurement is childcare policies relating to Board service; a reimbursement "Accountable Plan" may avoid the appearance of private inurement for these types of services and will likely be further analyzed in a forthcoming information guide on operational issues for MSCs.

B. Conflict of Interest Policy

Tax exempt entities must also have a conflicts of interest policy. This is intended to help support and enforce the "no private inurement" rules as a matter of corporate policy.

For MSCs, the need for a conflict-of-interest policy is most likely to arise with respect to scholarships offered by the club. As a general matter, members of the club should not be eligible for a scholarship as a matter of both conflict-of-interest policies as well as to ensure there is no private inurement. Additional rules may apply with respect to scholarships given to other family members of club members, too. If the MSC has established a scholarship application, it should consider consulting with legal counsel regarding the rules and restrictions for scholarship awards.

MSCs may also experience conflicts issues with respect to business relationships between the club and its members. For example, the club may purchase products from a member to give away as appreciation gifts for club leadership. In these types of instances, the conflict of interest policy should provide that the club member will not participate in a vote approving the transaction, and the club should further document that the products were purchased for no more than fair market value (the price other third parties would pay for the product).

C. Lobbying And Political Campaign Activities

Different laws and regulations apply to lobbying (and political activities) at the federal, state and local levels. It is particularly important to consult with a legal expert if the MSC plans to engage in either lobbying or political activities given the potentially serious ramifications for the organization and its representatives. Because of this, lobbying and political activities conducted by MSCs should be undertaken only by those with a higher level of sophistication. The extent to which a spouse organization can be involved in any lobbying or political activity depends on what type of entity is involved. Generally, for § 501(c)(3)s and § 501(c)(7)s, the entity should not engage in lobbying activities as a "substantial part" of their overall activities. § 501(c)(3)s should not engage in any political activities (including opposing or supporting political candidates). MSCs should be aware of these restrictions particularly with regard to the posts of members on social media websites.

D. Other Policies

Volunteer waivers, employment agreements, reimbursement accountable plans, and policies for volunteer benefits (such as tuition/training reimbursement and childcare expenses for time spent in board meetings) are advisable, but will be discussed in a forthcoming Operational

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Guide as these do not directly affect federal or state tax and regulatory compliance matters except as generally provided in the private inurement discussion above.

VIII. APPLYING FOR STATE TAX EXEMPT STATUS

Similar to the process required to apply for federal tax-exempt status, a MSC may be eligible to apply for state tax exempt status, as discussed briefly above. It often helps to obtain federal tax-exempt status first because many, but not all, states look to federal tax exempt status as part of their regulatory scheme. Similar to the ability to raise funds without being subject to federal taxes, achieving state tax exempt status may also help a MSC raise funds without being obligated to report state taxes on the MSC revenue. A review of the MSC's state's tax code will be necessary to determine whether any state tax exemptions may apply to a MSC and/or whether an actual application for recognition as a state tax exempt entity is necessary.

IX. ANNUAL FEDERAL TAX REPORTING

Taking heed to the concern that “you don’t know what you don’t know”, investing in a CPA or enrolled agent to prepare tax filings is always advisable for nonprofit entities. While it does not appear there is a readily available listing of military-friendly tax return preparers or other military spouses with accounting backgrounds specifically, MSCs might find it helpful to contact the administrators of the military-friendly Facebook groups to ask for a reference from within the group.¹³

MSCs may be required to file one or more of the following annual federal tax forms:

A. Form 1120

A corporation is an entity separate from its shareholders. As a separate entity, a corporation must pay its own income tax. The corporation's shareholders are then taxed when they receive dividends at the dividend tax rate. This tax scheme is often referred to as double taxation because the corporation pays a tax on its earnings and then when the corporation distributes part of those earnings to shareholders, the shareholders are then taxed on those dividends – the same income is taxed twice.

Corporate income taxes are paid at the corporate income tax rate, which is currently 21 percent in general. Form 1120 is the U.S. Corporation Income Tax Return form that is used to report the income, gains, losses, deductions, credits and income tax liability of a corporation. All domestic corporations with income over \$5,000 must file Form 1120 whether or not they have taxable income unless they are tax exempt under section 501 or unless they are required to or elect to file a special return. A tax-exempt organization (other than a religious or apostolic organization), even if it has no UBIT income, files one of the Form 990 series returns.

¹³ For example: (1) Military Spouse Financial Counselors, (2) Military Spouse Financial Professionals, and/or (3) Bookkeeping Side Hustle Group.

Other business entities, such as S Corporations, partnerships, and LLC's are taxed differently than corporations. By default, an LLC is treated as a partnership if it has more than one owner and is disregarded as an entity separate from its owner if it only has one owner. In both cases, the LLC is a pass-through entity and the individual owners of the LLC are taxed individually on the LLC's income. However, if an LLC has filed Form 8832 to elect to be treated as an association taxable as a corporation, the LLC should file Form 1120. As discussed above, an LLC may have a single § 501(c)(3) organization as its sole owner, in which case the LLC's financial information will be reported as part of the § 501(c)(3)'s Form 990 series return.

It also appears that unincorporated associations who have not yet filed for tax exempt status should file a Form 1120 annually. If tax returns have never been filed by the association, the association should consult with counsel to determine whether the association should be dissolved, and a new corporate entity formed, in order to help limit the potential tax liability of the association's members.

B. Form 990-N

Tax exempt organizations are required to file annual returns and can be assessed IRS penalties if the return is not filed or is filed late. If an organization does not file the required return for three consecutive years, it will automatically lose its tax-exempt status. Several 990 series forms exist and the right one for the organization to file depends on the amount of its gross receipts for the taxable year.

If the organization's gross receipts are normally less than or equal to \$50,000, the organization is eligible to file the Form 990-N.¹⁴ Form 990-N is the simplest of the 990-series forms and is in the format of an e-Postcard.

Under several circumstances, a Form 990-N must be filed even if the organization is not operating under a granted application for tax exemption. First, if the organization's application for tax exemption is still pending, an officer of the organization must first call IRS Customer Account Services¹⁵ and ask for the organization to be set up to allow filing of Form 990-N. Second, if the organization did not file an application for tax exemption because it is a section § 501(c)(3) organization whose gross receipts in each taxable year are normally less than or equal to \$5,000 or because the organization is exempt under another section (such as § 501(c)(4)), an officer of the organization also should call the IRS Customer Account Services to ask that the organization be set up to file Form 990-N.

Form 990-N must be submitted electronically via <https://www.irs.gov>. An organization must first register on IRS.gov prior to filing its first Form 990-N. Form 990-N is due annually by the 15th day of the 5th month after the close of the organization's taxable year (i.e. for those with a

¹⁴ If the organization has gross receipts greater than \$50,000 but less than \$200,000 *and* has total assets less than \$500,000, the organization must file Form 990 or Form 990-EZ. If the organization has gross receipts greater than or equal to \$200,000 or total assets greater than or equal to \$500,000, the organization must file Form 990. A private foundation must file Form 990-PF regardless of its financial activity.

¹⁵ 1-877-829-5500

typical calendar year-end taxable year, the return is due May 15th of the following year). There is no penalty assessment for filing form 990-N late.

The IRS website contains a helpful User Guide¹⁶ to assist organizations in filing Form 990-N. Filing a Form 990-N is very simple. In order to complete Form 990-N, the organization needs to enter the following eight items¹⁷:

1. Employer Identification Number (EIN), also known as Taxpayer Identification Number (TIN)
2. Tax year
3. Organization's legal name and mailing address
4. Any other names the organization uses
5. Name and address of a principal officer
6. Website address if the organization has a website
7. Confirmation that the organization's annual gross receipts are \$50,000 or less
8. A statement that the organization has terminated or is terminating, if applicable

Once the required information is entered in the form and submitted, the site can be refreshed after seven minutes to show whether the submission was accepted or rejected. More details are available on the site if the submission is rejected by clicking on the submission ID hyperlink.

C. Form 990-EZ

A tax-exempt organization with gross receipts less than \$200,000 *and* total assets less than \$500,000 is required to file either Form 990-EZ or Form 990. The IRS.gov website includes a Form 990 Overview Course¹⁸, which includes helpful information. Form 990-EZ is due by the 15th day of the 5th month after the organization's accounting period ends (May 15 for a calendar-year filer).

Form 990-EZ requires reporting on exempt and other activities, finances, compliance with federal tax requirements, and compensation paid to specific individuals. Parts I through V of the form must be completed by all filing organizations, and Part VI must be completed by § 501(c)(3) organizations. Below is a breakdown of the topics covered in each Part:

Part I: Revenue, Expenses, and Changes in Net Assets or Fund Balances

Part II: Balance Sheets

Part III: Statement of Program Service Accomplishments

¹⁶ <https://www.irs.gov/pub/irs-pdf/p5248.pdf>

¹⁷ <https://www.irs.gov/charities-non-profits/information-needed-to-file-e-postcard>

¹⁸ <https://www.stayexempt.irs.gov/home/existing-organizations/form-990-overview>. Instructions for the Form 990-EZ can be found: <https://www.irs.gov/charities-non-profits/required-filing-form-990-series>

Part IV: List of Officers, Directors, Trustees, and Key Employees

Part V: Other Information

Part VI: Section 501(c)(3) Organizations

Certain types of organizations must also complete additional schedules.

By law, the IRS and the filing organization must make the organization's Form 990-EZ publicly available. The organization may also need to file its Form 990-EZ with state governments to fulfill state reporting requirements. Even though a MSC may be eligible to only file the Form 990-N, the MSC may choose to file the Form 990-EZ instead because potential donors or grantmaking entities often require a Form 990-EZ before agreeing to make a donation or grant.

D. Form 990

The Form 990 is the longest of the potential Form 990-type federal tax reports. It is generally required for tax exempt organizations that do not otherwise qualify to file a 990-N or a 990-EZ; generally this means that the exempt organization will have gross receipts greater than or equal to \$200,000 or assets greater than or equal to \$500,000. The Form 990 is a more complicated version of the other types of 990 forms and requires information about the organization's exempt and non-exempt activities, finances, governance, compliance with tax filings, and compensation paid. Because the filing requirement for the Form 990 would require a very significant level of operations for a MSC, a CPA or other tax professional should be consulted in conjunction with the filing of a Form 990.

E. Form 990-T

Despite having obtained tax exempt status recognition (including § 501(c)(3)s), entities are subject to tax on unrelated business income (a tax known as “**UBIT**”). Examples of UBIT may include income from a trade or business regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption. Entities with more than \$1,000 of unrelated business income must file a Form 990-T and may even need to pay estimated tax. Publication 598 contains substantial information on “Tax on Unrelated Business Income of Exempt Organizations.”

UBIT may be relevant to MSCs that operate thrift shops or gift shops, particularly gift shops that resell merchandise purchased for sale such as furniture, household goods, jewelry, and clothing. The Internal Revenue Code, regulations, and case law include very specific tests for determining whether such sales are substantially related to the organization's exempt purposes, which may include an item-by-item analysis. For example, the sale of furniture is not substantially related to the charitable or educational exempt purposes of a MSC that provides educational scholarships and grants to community members. However, the sale of books about military spouse educational opportunities would be substantially related to those exempt purposes.

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As discussed above, there are exceptions to the UBIT that depend on tests such as whether the items sold are donated and whether the business is run substantially by volunteers. Consultation with an attorney may be required to analyze and propose solutions for clubs faced with these complex issues.

F. Form 1099 or W-2

Many MSCs operate successful thrift shops which require the club to hire as an employee or independent contractor a manager and/or bookkeeper. Depending on the control exerted by the club over such individuals, they may be classified for federal tax-exempt purposes as an employee (for whom an annual W-2 and employment tax withholding is required), or an independent contractor (for whom only a Form 1099 is required). CMSC anticipates further discussion of these employment-related tax issues as part of a forthcoming Operational Guide for MSCs.

G. OCONUS MSCs: Status of Forces Agreement (“SOFA”)

OCONUS MSCs may run into foreign taxation issues. Some countries have entered into a “Status of Forces Agreement” (“SOFA”) which allows income earned in the host country to only be subject to US tax law. Because of the complexities of foreign taxation matters generally, especially for MSCs formed as unincorporated associations, tax counsel and/or a CPA’s advice will especially be necessary.

Military orders containing provisions applicable to private organizations operating on overseas installations may provide some guidance on SOFA issues. In addition, community service arms of the Army, Air Force, Marine Corps, and Navy may publish private organization guides containing helpful information. For example, Marine Corps Community Services in Okinawa, Japan published a Private Organizations Guide in 2018 applicable to private organizations seeking recognitions on Marine Corps Installations Pacific bases.

X. STATE TAX AND REGULATORY COMPLIANCE

In addition to federal tax compliance for annual reporting and potentially seeking tax exempt status, a similar structure for annual reporting and tax-exempt recognition is likely to also exist at the state government level.

A. Annual Reports Filed with Secretary of State’s Office

As generally described above, most LLCs and nonprofit corporations are required to file annual reports with their state’s Secretary of State. The content of the filings varies significantly by state law but will generally require a list of the names of the decision-makers (managers, members, board members, etc.), and their contact information. The annual registration usually costs under \$50 for nonprofit entities, and many states do not require annual filings for LLCs. Similarly, some states’ unincorporated association statutes will require annual reporting of changes in membership in the local county recorder’s offices. While annual reporting with the Secretary of State or county offices may seem intrusive since this information is available publicly, MSCs

should remember that these disclosures are very common in the civilian world and should not be a cause for concern by governing members of the entities.

B. Annual Charitable Solicitations Reporting Filed With The Attorney General's Office

Regardless of whether a MSC is formed as a nonprofit corporation or unincorporated association, a MSC will need to navigate certain state-specific nonprofit regulatory requirements. Chief among those common requirements is charitable solicitation registration. The MSC nonprofit's board should review the organization's fundraising footprint to determine where the MSC is soliciting donations and through what vehicles (emails, website "donate now" button, printed mailings, phone calls). The MSC board should implement a proactive registration strategy in the states in which it is required to register and remain updated on where the organization is reaching out for solicitations as time passes. A reference guide with each state's charitable solicitations registration act is attached as **Appendix A**.

1. Common Charitable Solicitation Registration Requirements

The state entity governing charitable solicitation is generally a separate entity from the Secretary of State and may be part of the state Attorney General's office, the Registry of Charitable Trusts, the Office of Charitable and Regulatory Programs, the Division of Consumer Services, or similar. Typically state charitable solicitation rules require filing a registration statement and including certain disclosures on solicitation materials, whether online, in emails, or other printed materials. Depending upon state laws, a nonprofit may qualify for an exemption from the charitable solicitation requirements if it receives less than a certain amount of fundraising income from that state. However, there are also states that do not give any relief from the registration requirements no matter how minimal the nonprofit's fundraising efforts in that state. Additionally, the state's charitable solicitation requirements may only apply if it is a § 501(c)(3) entity.

MSCs should determine whether it has ever previously registered with a given state before filing a new registration statement because its nonprofit's status with that state may affect how to proceed. It is critical to determine the current status of the nonprofit's various state filings especially in the case of MSCs whose board members change frequently.

Registration requirement vary widely so MSCs will have to research the particular state rules at issue. States generally have their own helpful websites, but other nonprofit resources exist online as well providing general guidance.¹⁹ To register, states generally require nonprofits to complete an application form, pay a fee, include supporting documents such as articles of incorporation, IRS determination letter and recent 990 return, and submit financial statements.

The state may also require the nonprofit to complete a separate filing with the Secretary of State to register as an out-of-state ("foreign") nonprofit corporation, called "foreign qualification" before soliciting donations in that state. Foreign qualification may require the nonprofit to appoint a registered agent in that state in order to receive legal documents in that state on behalf of the

¹⁹ Two helpful websites are: <https://www.nasconet.org/resources/state-government/> and https://www.fundraisingregistration.com/resources/state_statutes.php.

nonprofit. Some states may only require appointment of a registered agent but not Secretary of State foreign qualification.

State registrations are generally subject to renewal annually or bi-annually. Many states post public lists of charities that are delinquent in their charitable solicitation registrations.

In addition to having the MSC file the forms by itself, there are services that will provide software and other assistance to help register in multiple states, such as Harbor Compliance²⁰, SimpleCharityRegistration.com²¹, Foundation Group²², and Clearly Compliant²³.

2. Triggers for Charitable Solicitation Registration Requirements

If a MSC's state of formation is a state that requires charitable solicitation registration (almost all states do), the MSC will need to research what its state requires first. Next, if the MSC solicits donations from residents of other states—through its website, targeted emails, printed mailings, or events – it may be required to file charitable solicitation statements in multiple other states.

A number of different activities may trigger charitable solicitation requirements, including but not limited to:

- Board members living in different states
- Applying for grants in the state
- Sending emails asking for donations to residents of the state
- Hosting events in the state
- Including “Donate Now” buttons on the nonprofit’s website
- Engaging a professional fundraiser to help attract donations

If your officers and directors live in different states and solicit donations in those states, you may have a filing requirement in those states due to their presence there, maintaining satellite offices there, or conducting events in those states. Applying for grants may also be considered solicitation in the state in which the grant maker is located, so if a MSC applies for grants in several states, it may need to register in those states. Email solicitations to residents of various states may trigger registration requirements. The states in which a MSC hosts fundraising events may trigger registration requirements.

“Donate Now” buttons on websites may even trigger registration requirements in some states – Colorado, and Tennessee are two examples. Nonprofits can also contract with professional fundraisers – Network for Good is an example – who act as facilitators for accepting donations, particularly with respect to online donation buttons. In 2001, the National Association of State

²⁰ <https://www.harborcompliance.com/fundraising-registration>

²¹ <https://www.simplecharityregistration.com/default.aspx>

²² <https://www.501c3.org/501c3-services/charitable-solicitations-registration/>

²³ <http://www.clearlycompliant.com>

Charity Officials released a white paper called the “Charleston Principles”²⁴ that provide recommendations for how to handle online fundraising compliance, but the principles are not law and do not include more recent tools like social media. Currently there is no nationwide law or guidance regulating online donations, so it is an area in the law in significant flux. For that reason, it is important to research the relevant state rules to ensure the nonprofit complies with current state online fundraising laws.

Additionally, contracting with professional fundraisers may require the nonprofit to register in states in which the professional fundraiser is soliciting donations on behalf of a MSC. Usually, the professional fundraiser also has to register with the state in its own name, but the nonprofit will have a separate registration requirement as well. In a professional fundraising situation, the state may require submission of the contract between the nonprofit and the fundraiser when registering.

States may have separate standards for nonprofits who merely receive donations from residents of certain states, even if the nonprofit is not actively soliciting donations in that state. Some states require registration in these circumstances within a certain number of days of receiving donations, or after repeated or substantial gifts from donors residing in the state trigger registration.

Keeping good records about where a MSC is soliciting donations and through what means (online, email, phone, events, professional fundraisers) is key to remaining compliant with state charitable solicitation requirements.

MSCs should conduct research in all relevant states where it may be soliciting donations, taking a broad view of what each state may consider a solicitation. Even if a MSC does not think an action it is taking is a solicitation of donations, a state may consider the same action to be charitable solicitation triggering a registration requirement. Although there is no good substitute for a MSC to research of current state requirements, the following online resources provide a general overview of state requirements (albeit generally not updated to current year):

- [Summary Survey of State Charity Registration Requirements in All 50 States and the District of Columbia](https://www.probonopartner.org/wp-content/uploads/2018/02/Charitable-Solicitation-Survey-February-2018.pdf), available at <https://www.probonopartner.org/wp-content/uploads/2018/02/Charitable-Solicitation-Survey-February-2018.pdf>
- Harbor Compliance [Fundraising Compliance Guide](https://www.harborcompliance.com/information/charitable-registration), available at <https://www.harborcompliance.com/information/charitable-registration>

C. Annual Tax Reporting

Many states may require annual (or more frequent) tax reporting similar to the Form 990 required by the federal government. Remember, just because a MSC is formed as a nonprofit corporation, or even as a federal tax-exempt entity, does not necessarily eliminate the need for the MSC to file state tax reports and/or pay state taxes. Again, the use of a CPA or tax professional for advice on reporting requirements is advisable. While many states grant exemptions for

²⁴ <http://www.nasconet.org/wp-content/uploads/2018/04/Charleston-Principles.pdf>

federally-recognized nonprofit entities, this is not always the case and/or only § 501(c)(3) entities might receive state tax exemptions. While it may seem intimidating to also have to apply for state tax exempt status and comply with state tax reporting, the burden of doing so is often coupled with the benefit of receiving tax exemptions.

XI. MILITARY INSTALLATION COMPLIANCE FOR MSCs

It should come as no surprise that operating MSCs on a military base subjects the MSC to the jurisdiction of Department of Defense, military branch, and installation-specific requirements. Many of the requirements of regulations by each of these interested regulating bodies overlap, so it is advisable for MSCs to first consider whether they have complied with DoD regulations, and then move to military branch-specific regulations, and finally any base-specific requirements. The below summary should be used as a starting point for compliance, but the actual regulations described below should be consulted to ensure complete compliance.

A. Non-Federal Entity DoD Instruction 1000.15

MSCs are categorized as “non-Federal entities” (“NFE”). NFEs are defined as “A self-sustaining organization, incorporated or unincorporated, that is not an agency of instrumentality of the Federal Government.” Department of Defense Instruction No. 1000.15 (Oct. 24, 2008) (the “NFE DoDI”). NFEs can include several legal types of entities, including private organizations (“PO”) such as MSCs.

Generally speaking, one of the reasons the government establishes rules for a NFE/PO is to ensure the federal government is not held liable for actions of the NFE/PO, and similarly that it does not appear the federal government is sanctioning, endorsing, or supporting the NFE/PO which might cause a conflict of interest. This being said, the NFE DoDI readily recognizes that “non-Federal entity support of Service members and their families can be important to their welfare.” NFE DoDI(4).

The NFE DoDI is detailed, but its Enclosure 2 (Procedures) highlights the following general legal issues for MSCs to be aware of in its formation documents:

Endorsement: MSCs may not use DoD seals, logos, or insignia of the DoD, or any DoD Component, DoD organizational unit, or DoD installation. However, MSCs may use the name or abbreviation of the DoD, a DoD component, organizational unit, or installation in its name provided that the MSCs’s status as a NFE is apparent, unambiguous and there is no appearance of official sanction. For example, many MSCs use the name of their installation in their legal name, but do not include reference to “AFB”, or “Post”, or such MSCs have received base approval for use of the military installation name.

Disclaimer: MSCs must also prominently display a disclaimer on print and electronic media stating “THIS IS A NON-FEDERAL ENTITY. IT IS NOT A PART OF THE DEPARTMENT OF DEFENSE OR ANY OF ITS COMPONENTS AND IT HAS NO GOVERNMENTAL STATUS.” A similar statement must be made in oral communications and

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public announcements when the name of the entity is used. Presumably, the disclaimer requirement applies to a MSC's written organization documents.

DoD Personnel: DoD Personnel are not permitted to act in an official capacity to sign a charter which serves as the legal basis for MSCs.

Formation Documents: Formation documents (articles of incorporation, written constitution, bylaws, charters, articles of agreement or other authorization documents) must be approved by the installation commander, and must generally include:

1. The nature, function, and objectives of the MSC;
2. A description of eligible membership in the MSC;
3. A non-discrimination clause relating to membership on the basis of race, color, creed, sex, age, disability, or national origin;
4. Designation of financial management responsibilities;
5. A certification that members understand they are personally liable, as provided by law, if the assets of the MSC are insufficient to discharge all liabilities (practically this would only be the case for unincorporated associations that do not provide liability protection for members)

Compliance with Laws: MSCs must comply with applicable fire and safety regulations; environmental laws; local, State, and Federal tax codes; and any other applicable statutes or regulations. It would be appropriate for articles of organization, constitutions, or bylaws to include such a requirement.

No Private Inurement/Benefit: Similar to tax-exempt requirements for 501(c)(3)s, MSC income is not permitted to benefit individual members except through wages, salaries, or award recognition for services.

B. Army Regulation

Army Regulation 210-22 effective 12 May 2022 ("AR 210-22") describes regulations applicable to private organizations on Department of the Army Installations. These are called Non Federal Entities (NFE).

2-2. Non-Federal Entity application requests, required documentation, and reviews

a. Request requirements. NFEs requesting access to the installation must submit a written request to the Senior Commander (SC) that includes the following:

- (1) A statement that indicates that neither the installation, nor the Government, will have any liability for the NFE's actions or debts.
- (2) A statement that acknowledges the SC may revoke permission to operate at any time.
- (3) A statement that acknowledges an approval to operate expires in 2 years and may be renewed biennially upon an NFE's request, subject to the SC's approval.
- (4) A statement that confirms current and future NFE personnel and volunteers who have regular contact with children under 18 years of age on the installation have undergone appropriate background checks.

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(5) NFEs may request support for multiple or recurring events in a single letter.

b. Application. The NFE written application will include the following:

- (1) A charter, articles of agreement, constitution, bylaws, or other authorization documentation acceptable to the SC (if affiliated with a national, regional, or state organization, the NFE will include evidence of affiliation).
- (2) The NFE's purpose, functions, objectives (including planned use of funds), and activities.
- (3) An explanation of membership eligibility and responsibilities for all management functions (including accountability of assets, coverage, and limitation of insurance, and disposition of remaining assets on breakup of the NFE).
- (4) A statement of the NFE's liability, if assets are not enough to cover all NFE liabilities. The statement of liability will include a provision that:
 - a. All State and jurisdictional laws are met.
 - b. Address the extent of the NFE members' personal liability for debts of, or claims against, the NFE.
- (5) Agreement to reimburse the Army for utility expenses, unless use is incidental (would cost more to bill and collect than it costs to provide the utility).
- (6) A statement that the NFE will neither:
 - a. Propagate extremist activities, nor
 - b. Advocate violence against others,
 - c. Endorse the violent overthrow of the Government.
- (7) A statement that NFE activities will not seek to deprive individuals of their civil rights.
- (8) NFEs must provide a statement that they will not engage in any form of partisan political activity as defined by DoDD 1344.10.

c. Evaluation. Evaluating requests for access to military installations and use of facilities is at the discretion of the SC and based on public law, executive order, DoD directives, DoD instructions, MOUs, and ARs.

d. Conditions.

- (1) All initial requests and revalidations will be reviewed by the primary installation legal advisor.
- (2) Approval is granted or denied based on local conditions, demonstrated need for the NFE's services, compatibility with the Army's interest and policies, and legal review.
- (3) Requests will include documentation identifying the NFE's organization, charter, constitution, or by-laws and membership, objectives, and activities.
- (4) Approvals are for 2 years, unless cancelled by either party.
- (5) Revalidation requests to the SC must be no less than 90 days before expiration of current approval (commanders may establish longer suspense times).
- (6) Requests will include documentation of any changes from its current approval.
- (7) Notification of termination by either party will be in writing. On termination, commanders may require written agreements that any abandoned NFE's assets will be considered abandoned to the installation. The SC has final approval over their disposition.

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(8) Reviews ensure that individual members do not personally profit from NFE income, except through—

(a) Salaries and wages as NFE employees.

(b) Award recognition for services rendered to the organization or community.

5–2. Insurance

a. NFEs will obtain adequate insurance as protection against public liability, claims, property damage claims, or other legal actions arising from NFE activities, one or more of the NFE's members acting on its behalf, or the operation of any equipment, apparatus, or device under the control and responsibility of the NFE.

b. Fidelity bonding will be purchased by an organization for members or employees handling monthly cash flow exceeding \$500. Bonding will be equal to the normal maximum amount of cash handled.

5–3. Audit

a. NFEs with gross annual revenue of \$1,000 or more will arrange for an audit at least once every 2 years, at their own expense, and will provide the audit to the Army installation NFE point of contact (on change of NFE treasurer, an audit will be conducted, regardless of the time elapsed since the last audit). NFEs with financial statements audited annually by their national headquarters may submit a copy of such an audit rather than applying the following provisions:

b. NFEs using a double-entry accounting system will have audits done by a qualified auditor.

c. NFEs using a single-entry accounting system are audited as follows:

(1) Audits of income from contributions, dues, and assessments may only be conducted by either an NFE member who holds no office and is at least 18 years of age, or by a qualified auditor.

(2) When an NFE engages in resale or other fundraising activities, the audit will be performed by either an appointed committee of three NFE members who hold no office, or by a qualified auditor.

5–4. Compliance with Federal, State, and local laws

a. *NFEs are not exempt from State or local laws because they operate on Federal property.*

b. NFEs will obtain licensing, certification, or registration of NFE activities if required by State, local, or foreign authorities where the installation is located. The HBB owner is required to comply with, and is subject to, inspection by the appropriate city, county, State, or Federal agency, office, or department for compliance with applicable laws, codes, regulations, and requirements.

c. *NFEs will comply with all Federal, State, and local tax laws and codes.*

5–5. Membership and employment practices

NFEs will not unlawfully deny membership, unlawfully exclude from participation, or otherwise subject to unlawful discrimination, any person because of race, color, religion, sex, national origin, reprisal, disability, age, sexual orientation, gender identity, status as a parent, or other impermissible basis.

a. *The above paragraph does not preclude the following:*

(1) The existence of religious, cultural, or ethnic NFEs when—

(a) Membership is not restricted or discriminatory; and

- (b) Similar religious, cultural, or ethnic NFEs are approved without preference.
- (2) Approval by the SC for the operation of certain NFEs that restrict membership to one sex, when one or more of apply (examples include women's and/or men's sport clubs, women's and/or men's civic associations, and boy/girl scouting organizations).
 - (a) The NFE's purpose is philanthropic, and, by tradition, its membership has been of one sex.
 - (b) The NFE's purpose is to benefit one sex, and its membership is composed of that sex.
 - (c) The NFE has a specific purpose and function that restricts membership of one sex, but also has a counterpart organization with the same purpose and function.
- b. NFE membership campaigns and recruitment practices must not involve, or give the appearance of involving compulsion, coercion, reprisal, or influence.
- c. NFEs will comply with applicable laws that apply to private sector employment.

C. Air Force Instruction 32-223

Air Force Instruction 32-223 adopted December 13, 2019 ("AFI 32-223") implements the NFE DODI, and generally requires the following in addition to the NFE DODI:

Installation Commander Approval: The installation commander may delegate approval authority for the establishment of POs to the Mission Support Group Commander. An installation commander may withdraw authorization if the MSC "prejudices or discredits the United States Government, conflicts with Government activities, or for any other reason or just cause." The installation commander also authorizes contractor and subcontractor participation when justified.

Force Support Squadron ("FSS"): FSS is responsible for monitoring and administering the installation's PO Program, and advises the installation commander on PO changes, including a recommendation to revoke or continue permission to operate.

Annual Review: The Force Support Resource Manager or Resource Management Flight Chief is responsible for annually reviewing the PO's records.

Installation Staff Judge Advocate: Installation legal offices are not permitted to provide legal advice to POs, and in which case outside legal counsel should be hired. However, legal offices may identify and apply the formation, certification, and recertification, annual financial reports and fiscal controls, and dissolution provisions of AFI 34-223.

DoD Personnel: DoD personnel may not be on official duty time when developing constitutions, bylaws, or similar documents in support of PO activities.

Formation Documents: A MSC's constitution, bylaws, or similar documents must:

1. Address the nature, function, objectives, membership eligibility, and sources of income of the PO.
2. Include certification that MSC members were notified and understand their personal financial liability for obligations of the PO, as provided by law.

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3. Describe the responsibilities of the PO officers and their role in asset accountability, and financial and operational management.

4. Provide guidance on disposition of residual assets and liability upon dissolution. (AFI 34-223 specifically notes that residual assets may be given to the Air Force, or a NAF Instrumentality in accordance with AFI 51-601, and when the constitution, bylaws, or similar documentation allow this).

Re-Certification: A MSC's request for certification must be resubmitted for review and approval every two years, or when there is a change in the purpose, function, or membership eligibility of the PO, whichever comes first. Such review must be completed by the base legal office. The MSC must also provide contact information for a primary and alternate local representative.

Discrimination: MSCs may not discriminate in hiring practices or membership policies on the basis of "age (over 40 years), race, religion, color, national origin, disability, ethnic group, or gender (including pregnancy, gender identity and sexual orientation). Specifically, AFI 34-223 states, "Spouses clubs will be open and inviting to spouses of both genders and any sexual orientation." POs are not permitted to haze or harass (physically or mentally) as part of initiation rights. These requirements and protected classes should be included in MSC bylaws concerning qualifications for memberships.

Financial Responsibility: POS must "properly plan and adequately control the money aspects of their goals and objectives, including cash and other assets." Additionally, POs must "use budgets and financial statements as financial management tools. Additional financial requirements are provided in the Air Force Services Activity Private Organization Guide."²⁵ The Air Force Services Activity Private Organization Guide explicitly references that compliance with relevant tax laws is the responsibility of the PO: "POs must comply with all applicable federal, state, local, and foreign laws governing like civilian activities. Some POs may qualify for tax-exempt status. It is the responsibility of PO to obtain the proper tax exempt information and forms through the regional Internal Revenue office and the state taxing authority." POs are also required to prepare an income-and-expense statement, and balance sheet. MSCs should consider including these requirements in its bylaws and/or financial policies.

Audits: CPAs are required to perform annual audits of POs with gross annual revenues of \$250,000 or more. Use of a Certified Government Financial Manager is permitted for overseas location when the Resource Management Flight Chief documents a CPA is not available. Similarly, accountants (but not necessarily a CPA) is required to perform annual financial reviews of POs with gross annual revenues between \$100,000 and \$250,000. Finally, POs with gross annual revenues less than \$100,000 but more than \$5,000 are not required to conduct an independent audit or financial review but must provide an annual financial statement to the Force Support Resource Manager/Resource Manager Flight Chief no later than 20 days following the end of the PO's fiscal year. If there are signs of fraud or other improprieties, the installation

²⁵ This guide appears to be able to be found at: <https://nellislife.com/wp-content/uploads/2018/02/Private-Organization-Guide.pdf>

commander has the ability to request an audit from the Air Force Audit Agency. MSCs should consider incorporating these requirements for audits in its bylaws and/or financial policies.

Bonding: POs are encouraged to consider bonding for its treasurer. In which case, the bonding requirements should be included in the MSC's bylaws.

Fraud reporting: PO officers and members are required to report “any signs of fraud or other improprieties” to the Force Support Squadron Commander/Director. MSCs should consider adopting a whistleblower policy to provide a reporting requirement internally and/or through the FSS Commander/Director.

Dissolution: When a MSC decides to dissolve or shut down, it must satisfy outstanding debts and liabilities, dispose of the residual balance as decided by the PO membership, and notify the FSS Commander/Director of the intent to dissolve and provide a time-phased action plan to do so.

Recently in 2019, the Air Force issued a Private Organization Guide providing information and sample documents for private organizations on Air Force installations.²⁶ The 22-page Guide discusses definitions and authority, oversight, how to establish a private organization, operating policies, logistical support, and dissolution procedures. The Guide also provides samples of the following documents: Constitution, By-Laws, Budget, Statement of Cash Position, Balance Sheet, and Income and Expenses Statements for cash and accrual accounting systems.

There is also a March 3, 2015 Pacific Air Forces Spouse's Club Handbook written by the Pacific Air Forces Directorate of the Staff Judge Advocate (“**PACAF Guide**”).²⁷ The PACAF Guide is 13 pages long and includes discussions on the following topics: sources of authority, approval to operate and organizational documents, restrictions on spouses' clubs, taxes, scholarships, thrift shops, gift shops, art auctions, dissolving a spouses' club, and legal support. The PACAF Guide cites heavily to AFI 34-223, discussed above. Notably, in a section about political activities, the Guide highlights that: “the tax -exempt status of the spouses' club may be jeopardized by engaging in activities that are beyond the scope of the original purpose for which the club was formed. This is particularly true of spouses' clubs organized as charitable or social organizations.” The section in the Guide on taxes encompasses nearly 4 pages.

Unfortunately, the Guide erroneously states that “spouses' clubs that are outside the United States are not subject to taxation by U.S. authorities. This means that you do not have to file for exemption or file annual information returns with the IRS. Overseas clubs should consult their local Force Support Squadron to determine their status under the Status of Forces Agreement (“**SOFA**”) with regard to host nation tax laws.” We have located no support for a conclusion that overseas MSCs operated by U.S. citizens on U.S. military installations are not subject to U.S. taxation. Indeed, all research indicates the opposite – that as groups of U.S. citizens, activities of

²⁶ This guide is available at: <https://86fss.com/wp-content/uploads/2020/02/2019-Private-Organization-Guide.pdf>

²⁷ This guide will be made available in the near future on CMSC's website.

an unincorporated association having gross receipts in excess of \$5,000 would be subject to U.S. taxation. Many nonprofits of all types operate overseas and are subject to U.S. taxation, which is a worldwide taxation system. In addition, if the MSC pays wages to employees or 1099 workers, the IRS can track those forms issued to individuals back to the MSC and then begin an inquiry into the MSC's operations.

The PACAF Guide (and other military orders cited in this document) also references U.S. employment laws that may be applicable to the MSC, which further supports the applicability of U.S. laws to a MSC operating on a military installation overseas. While foreign governments and public international organizations are not subject to U.S. tax, a private organization like a MSC does not fall within those definitions. Further, if a MSC operating overseas is not considered a U.S. entity that is formed under U.S. law, then it by elimination is an entity formed in the host country and would be subject to host country taxation and corporate formation laws, including requirements to seek tax exemption under a foreign country's laws.

The PACAF Guide also recommends that MSCs seek outside counsel regarding Section 501(c)(3) status for thrift shops and gift shops and in setting up the organization and doing business. The Guide emphasizes that MSC officers should ensure that all required reports and tax forms are timely filed.

D. Navy Guidance

We were unable to locate Navy-specific guidance for the operation of private organizations on Navy bases. There was a link to OPNAV Instruction 1754.5B that discusses Navy Family Readiness Group requirements, but this link is no longer active. MSCs operating on Navy Installations would be wise to discuss installation-specific requirements with their base legal office and installation commander.

E. Marine Corps Guidance

The Marine Corps has not issued any overall guide or handbook specific to MSCs other than a series of Marine Corps Orders applicable to the operation of various types of private organizations on Marine Corps installations. The Marine Corps order applicable to MSCs is MCO 5760.4c "Procedures and Support for Non-Federal Entities Authorized to Operate on Marine Corps Installations and Informal Funds)."²⁸ The Marine Corps also follows NFE DoDI 1000.15. On many installations, responsibility for the private organizations may fall under the authority of Marine Corps Community Services ("MCCS") in addition to the commander of the installation.

Each Marine Corps installation also may issue its own orders setting forth procedures and rules applicable to private organizations operating on that installation.²⁹ The MSC should ensure that it

²⁸ MCO 5760.4c is available here: <https://www.marines.mil/Portals/1/Publications/MCO%205760.4C.pdf>

²⁹ See, e.g., MCIEAST-MCB CAMLEJO 5760.1B, "Private Organizations Operating Aboard Marine Corps Installations East Installations and Informal Funds," available at: <https://www.mcieast.marines.mil/Portals/33/Documents/Adjutant/Orders/05000/MCIEAST-MCB%20CAMLEJO%205760.1B.pdf?ver=2017-07-18-102957-147>

reviews any applicable Marine Corps orders for its installation. Overseas installations also have specific Marine Corps orders, such as the Marine Corps Installations Pacific Order (“MCIPACO”) 5760.1.³⁰ None of these orders provide many details about how to properly operate a MSC and contain mostly general information to conduct further research into what laws or requirements may apply. For instance, MCIPACO 5760.1 provides, regarding tax compliance: “POs and unofficial activities must comply with all applicable federal, state, local, and foreign laws governing like civilian activities. Some POs may qualify for tax-exempt status. It is the responsibility of the PO or unofficial activity to obtain proper tax-exempt information and forms through the regional Internal Revenue Service office and state taxing authority.” Notably, the Marine Corps Installations Pacific Order takes the position that U.S. tax laws do apply to overseas MSCs.

We have located a “Private Organizations Guide” issued by MCCA in 2018 that provides information and sample documents for private organizations on Marine Corps Installations Pacific.³¹ This Guide is 43 pages long and covers the following topics: authority, concept of operations, establishing a private organization, financial reporting, submission requirements, recommended minimum accounting procedures, fundraising, logistical support, private organization status, and dissolving a private organization. The Guide also provides samples for: constitution and bylaws, annual budget forecast compliance checklist, instructions for financial statement, and format for auditor’s report. Although this Guide was developed for the Marine Corps installations in the Pacific, much of its information is applicable to MSCs worldwide. The Guide does reference the necessity for private organizations to contact the IRS to ensure it obtains an EIN for tax filing and reporting and that it is filing all required forms related to employees. The Guide also includes a sample “Request for Approval of Private Organization” that includes as one example of a reporting period for the organization: “IRS Requirement (mandated by the IRS for tax-exempt organizations).” Both that reference and the reference to the IRS regarding employees again confirms that private organizations operating overseas are subject to U.S. tax laws. However, the Guide unfortunately does not include any more detailed information about tax compliance.

F. Space Force Guidance

Given the recent creation of the Space Force, it is likely it will be several years before Space Force installations are created which might require the private organization regulations apart from Air Force Instructions.

XII. GLOSSARY

Articles of Incorporation: An organization’s Articles of Incorporation is a legal document that contains basic information about the organization such as its name, registered agent, address, and purpose of the organization. State agencies require the Articles of Incorporation to be filed in

³⁰ MCO 5760.1 is available here: https://www.mcipac.marines.mil/Portals/28/Documents/SJA/MCIPACO_5760.1-NFE_Support.pdf

³¹ The MCCA Private Organizations Guide is available here: https://www.mccsokinawa.com/uploadedFiles/MainSite/Content/Secondary_Nav/About_Us/Private_Organizations_and_Fundraisers/Tabs/Downloads/Private%20Organization%20Guide%202018.pdf

order to create an organization recognized by state and federal law. If the organization applies for section 501(c) tax exempt status, the Articles of Incorporation will need to include specific language to demonstrate that the organization meets the test for nonprofit status. IRS Publication 557³² provides detailed guidance and sample language.

Bylaws: Bylaws are an organization's operating rules that define how the organization will function. Bylaws include rules concerning, among other corporate governance issues, the size and composition of the board of directors, the duties and responsibilities of directors and officers, the procedures for meetings and elections, and how funds are allocated.

Constitution: As unincorporated associations, some MSCs use a "constitution" to serve the same purpose as the articles of incorporation and bylaws combined. A Constitution may also be required by the military base's private organization rules or commanding officer who approves private organizations operating on the military base.

Corporate Income Tax: Corporate income tax is the tax paid by a corporation on its earnings.

Estimated Tax: An organization must pay estimated tax if it expects its tax for the year to be \$500 or more (i.e. for unrelated business income)³³.

Gross receipts: The total amount of money an organization receives from all sources before taking out costs or expenses.

Payroll Taxes: Payroll taxes are the taxes paid by employers on the wages and salaries of employees, including the FICA (Social Security) and Medicare federal taxes as well as state payroll taxes such as state unemployment insurance or state disability insurance.

State Sales and Use Tax: Sales tax is a consumables tax placed on retail sales, leases or rentals of many goods, and taxable services. Use tax is applied by the state when merchandise is purchased from outside state lines for use or consumption within the state. Nonprofit organizations that are tax exempt may qualify for state sales and use tax exemption, which would allow the organization to purchase items to use by the organization, such as office supplies, tax-free.

Unrelated Business Income Tax ("UBIT"): Unrelated business income tax is defined in Code § 5012(a) as "the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter..."

³² <https://www.irs.gov/pub/irs-pdf/p557.pdf>

³³ <https://www.irs.gov/charities-non-profits/estimated-tax-unrelated-business-income>

APPENDIX A: LISTING OF RELEVANT STATE STATUTES

*The following statutory citations are for reference only. MSJDN Foundation does not represent this is an exhaustive list of relevant statutes. MSCs should always consult legal counsel in interpreting these statutes.

STATE	UNINCORPORATED ASSOCIATION STATUTE	NONPROFIT CORPORATION STATUTE	LIMITED LIABILITY COMPANY STATUTE	CHARITABLE SOLICITATIONS STATUTE
Alabama	Alabama Unincorporated Nonprofit Association Law: Ala. Code § 10A-17-1.01 <i>et seq.</i> (2014)	Alabama Nonprofit Corporation Law: Ala. Code § 10A-3.1.01 <i>et seq.</i> (2014)	Alabama Limited Liability Company Law of 2014: Ala. Code § 10A-5A-1.01 <i>et seq.</i> (2014)	Ala. Code § 13A-9-70 <i>et seq.</i> (2014)
Alaska	No relevant statute found	Alaska Nonprofit Corporation Act: Alaska Stat. § 10.20.005 <i>et seq.</i>	Alaska Revised Limited Liability Company Act: Alaska Stat. §§ 10.50.010 <i>et seq.</i> (1995)	Alaska Charitable Solicitations Act: Alaska Stat. § 45.68-010-900
Arizona	No relevant statute found	Arizona Nonprofit Corporation Act: Ariz. Rev. Stat. Ann. § 10-3101 <i>et seq.</i>	Arizona Limited Liability Act: Ariz. Rev. Stat. Ann. § 29-3101 <i>et seq.</i>	No relevant statute found

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Arkansas	Revised Uniform Unincorporated Nonprofit Association Act: Ark. Code Ann. § 4-28-601 <i>et seq.</i>	Arkansas Nonprofit Corporation Act: Ark. Code Ann § 4-28-201 <i>et seq.</i>	Arkansas Small Business Entity Pass Through Act: Ark. Code Ann. § 4-32-101 <i>et seq.</i>	(Solicitation of Charitable Contributions): Ark. Code Ann. § 4-28-401 <i>et seq.</i>
California	(Unincorporated Associations, General Provisions): Cal. Corp. Code § 18000 <i>et seq.</i>	Nonprofit Corporation Law: Cal. Corp. Code § 5000 <i>et seq.</i>	California Revised Uniform Limited Liability Company Act: Cal. Corp. Code § 17000	Cal. Gov't Code § 12585; Cal. Code Regs. Tit. 11 § 300
Colorado	Uniform Unincorporated Nonprofit Association Act: Colo. Rev. Stat. § 7-30-101 <i>et seq.</i>	Colorado Revised Nonprofit Corporation Act: Colo. Rev. Stat. § 7-121-101 <i>et seq.</i>	Colorado Limited Liability Company Act: Colo. Rev. Stat. § 7-18-101 <i>et seq.</i>	Colorado Charitable Solicitations Act: Colo. Rev. Stat. § 6-16-101 <i>et seq.</i>
Connecticut	No relevant statute identified	Connecticut Revised Nonstock Corporation Act: Conn. Gen. Stat. Ann. §§ 33-1000 <i>et seq.</i>	Uniform Limited Liability Company Act: Conn. Gen. Stat. Ann. §§ 34-243 <i>et seq.</i>	Connecticut Solicitation of Charitable Funds Act: Conn. Stat. Ann. §§21a-190a-1901

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Delaware	Delaware Uniform Unincorporated Nonprofit Association Act: Del. Code Ann. tit. 6 § 1901 <i>et seq.</i>	Delaware General Corporation Law; see provisions concerning “exempt corporations”: Del. Code Ann. tit. 8 § 101 <i>et seq.</i>	Delaware Limited Liability Company Act: Del. Code Ann. tit. 6, §§ 18-101 <i>et seq.</i>	No applicable law
District of Columbia	Unincorporated Nonprofit Association Act of 2010: D.C. Code § 29-1101 <i>et seq.</i>	D.C. Nonprofit Corporation Act of 2010: D.C. Code § 29-401.01 <i>et seq.</i>	Uniform Limited Liability Company Act of 2010 (D.C. LLC Act): D.C. Code § 29-801.01 <i>et seq.</i>	(Charitable Solicitations): D.C. Code § 44-1701 <i>et seq.</i>
Florida	Florida Foreign Unincorporated Associations: Fla. Stat. Ann. § 622.01 <i>et seq.</i>	Florida Not For Profit Corporation Act: Fla. Stat. Ann. § 617.01011 <i>et seq.</i>	Revised Uniform Limited Liability Act: Fla. Stat. Ann § 605.0101 <i>et seq.</i>	Solicitation of Contributions Act: Fla. Stat. Ann. § 496.401 <i>et seq.</i>
Georgia	No relevant statute located, except Ga. Code Ann. § 9-2-24 (Action by unincorporated association) and § 9-2-25 (Action against unincorporated	Nonprofit Corporations: Ga. Code Ann. § 14-3-140	Georgia Limited Liability Act: Ga. Code Ann. §§ 14-11-	Georgia Charitable Solicitations act of 1988: Ga. Code Ann. § 43-17-1 <i>et seq.</i>

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	association; service of process; venue; what property bound by judgment)		100, 14-11-1109	
Hawaii	Uniform Unincorporated Nonprofit Association Act: Haw. Rev. Stat. § 429-1 <i>et seq.</i>	Hawaii Nonprofit Corporations Act: Haw. Rev. Stat. § 414D	Uniform Limited Liability Company Act: Haw. Rev. Stat. §§ 428-101 <i>et seq.</i>	(Solicitation of Funds from the Public): Haw. Rev. Stat. § 467B-1 <i>et seq.</i>
Idaho	Unincorporated Nonprofit Associations: Idaho Code § 30-27-101 <i>et seq.</i>	Idaho Nonprofit Corporation Act: Idaho Code § 30-30-101 <i>et seq.</i>	Idaho Uniform Limited Liability Company Act: Idaho Code § 30-25-101 <i>et seq.</i>	No applicable law
Illinois	No relevant statute identified	General Not for Profit Corporation act of 1986: 805 Ill. Comp. Stat. 105/101.01 <i>et seq.</i>	Limited Liability Company Act: 805 Ill. Comp. Stat 180/1-1 <i>et seq.</i>	Solicitation for Charity Act: 225 Ill. Comp. Stat. 460/0.01 <i>et seq.</i>
Indiana	No relevant statute identified except that unincorporated associations are defined as “entities” under Ind. Code Ann. § 23-17-2-12	Indiana nonprofit Corporation act of 1991: Ind. Code Ann. § 23-17-1 <i>et seq.</i>	Indiana Business Flexibility Act: Ind. Code Ann. §§ 23-18-1-1 <i>et seq.</i>	No applicable law

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Iowa	Revised Uniform Unincorporated Nonprofit Association Act: Iowa Code Ann. § 501B.1	Revised Iowa Nonprofit Corporation Act: Iowa Code Ann. § 504.101	Revised Uniform Limited Liability Company Act: Iowa Code Ann. § 490A.100	No applicable law
Kansas	No relevant statute identified	(nonprofits are governed by the general corporation statute): Kan. Stat. Ann § 17-60 <i>et seq.</i>	Kansas Limited Liability Company Act: Kan. Stat. Ann. § 17-7601 <i>et seq.</i>	Kansas Charitable Organizations and Solicitations Act: Kan. Stat. Ann. § 17-1759 <i>et seq.</i>
Kentucky	Kentucky Unincorporated Nonprofit Association Act: Ky. Rev. Stat. Ann. § 273A.005 <i>et seq.</i>	Religious, Charitable, and Educational Societies – Nonstock, Nonprofit Corporations: Ky. Rev. Stat. Ann. § 273.161 <i>et seq.</i>	Kentucky Limited Liability Company Act: Ky. Rev. Stat. Ann. § 275.001 <i>et seq.</i>	Ky. Rev. Stat. Ann. § 367.650 <i>et seq.</i>
Louisiana	Louisiana Unincorporated Association Act: La. Stat. Ann. § 12:501 <i>et seq.</i>	Nonprofit Corporation Law: La. Stat. Ann. § 12.201 <i>et seq.</i>	Louisiana Limited Liability Company Act: La. Stat. Ann. §12:1301 <i>et seq.</i>	(Deceptive practices in Soliciting Charitable Contributions): La. Stat. Ann. §51:1901 <i>et seq.</i>

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Maine	No relevant statute identified except “unincorporated entity” is defined in Me. Stat. tit. 13-C, § 102(39)	Maine Nonprofit Corporation Act: Me. Stat. tit. 13-B § 101 <i>et seq.</i>	Maine Limited Liability Company Act: Me. Stat. tit. 31-21 § 1501	Charitable Solicitations Act: Me. Stat. titl 9-13-385 § 5001 <i>et seq.</i>
Maryland	Md. Code Ann. Corps. & Ass’ns § 9A-202 <i>et seq.</i>	Md. Code Ann. Corps. & Ass’ns § 9A-202 <i>et seq.</i>	Maryland Limited Liability Company Act: Md. Code Ann. Corps. & Ass’ns § 4A-1103 (1992)	Maryland Solicitations Act: Md. Code Ann. Bus. Reg. §§ 6-101 to 6-701
Massachusetts	No relevant statute identified.	Corporations for Charitable and Certain Other Purposes: Mass. Gen. Laws ch. 180 <i>et seq.</i>	Massachusetts Limited Liability Company Act: Mass. Gen. Laws Ch. 156C, § 1 <i>et seq.</i>	Donations and Conveyances for Pious and Charitable Uses: Mass. Gen. Laws. ch. 68
Michigan	No relevant statute identified	Nonprofit Corporation Act: Mich. Comp. Laws § 162-1982-1 <i>et seq.</i>	Michigan Limited Liability Company Act: Mich. Comp. Laws § 23-1993-1 <i>et seq.</i>	Charitable Organizations and Solicitation Act: Mich. Comp. Laws § 400.271
Minnesota	No relevant statute identified	Minnesota Nonprofit Corporation Act:	Minnesota Revised Uniform	Charitable Solicitation Act:

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		Minn. Stat. § 317A.001	Limited Liability Company Act: Minn. Stat. § 322C.0101	Minn. Stat. §§ 309.50-61
Mississippi	No relevant statute identified; unincorporated associations are treated as “entities” under Miss. Code Ann. § 79-11-127	Mississippi Nonprofit Corporation Act: Miss. Code Ann. § 79-11-127	Revised Mississippi Limited Liability Company Act: Miss. Code Ann. § 79-29-101	Miss. Code Ann. §§ 79-11-501:529
Missouri	No relevant statute identified; unincorporated associations are treated as “entities” under Mo. Ann. Stat. § 355.066	Missouri Nonprofit Corporation Act: Mo. Ann. Stat. §355	Missouri Limited Liability Company Act: Mo. Ann. Stat. § 347.010 <i>et seq.</i>	Mo. Ann. Stat. § 407.456
Montana	No relevant statute identified; unincorporated associations are treated as “entities” under Mont. Code Ann § 35-2-114(16)	Montana Nonprofit Corporation Act: Mont. Code Ann. § 35-2-101	Montana Limited Liability Company Act: Mont. Code Ann. § 35-8-101	No applicable law
Nebraska	No relevant statute identified; unincorporated associations are treated as “entities”	Nebraska Nonprofit Corporation Act: Neb. Rev. Stat. § 21-19	Nebraska Uniform Limited Liability Company Act: Neb. Rev. Stat. §	No applicable law

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	under Neb. Rev. Stat. § 21-1914		21-102 <i>et seq.</i>	
Nevada	Unincorporated Nonprofit Associations (Uniform Act): Nev. Rev. Stat. § 7.81.700	Nev. Rev. Stat. § 7. 82	Nevada Limited Liability Company Act: Nev. Rev. Stat. § 86.141	No applicable law
New Hampshire	No relevant statutes identified except N.H. Rev. Stat. Ann. § 292:12 and § 292:14	Voluntary Corporations and Associations: N.H. Rev. Stat. Ann. §292: 27	New Hampshire Revised Limited Liability Company Act: N.H. Rev. Stat. § 304-C:1	N.H. Rev. Stat. Ann. §§ 7:19-32
New Jersey	No relevant statutes identified. The New Jersey Nonprofit Corporation Act specifically does not apply here in an effort to discourage use of unincorporated associations per legislative history.	New Jersey Nonprofit Corporation Act: N.J. Stat. Ann. § 15A:1-1 <i>et seq.</i>	Revised Uniform Limited Liability Company Act: N.J. Stat. Ann. §§ 42:2B-1 <i>et seq.</i>	Charitable Registration and Investigations Act: N.J. Stat. Ann. § 45:17A-18 <i>et seq.</i>
New Mexico	Unincorporated Associations: N.M. Stat. Ann. § 53-10-1 <i>et seq.</i>	Nonprofit Corporation Act: N.M. Stat. Ann. § 53-8-1	Limited Liability Company Act: N.M. Stat. Ann. § 53-19-1	Charitable Solicitations Act: N.M. Stat. Ann. § 57-22-1 <i>et seq.</i>

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New York	Membership Corporations and Unincorporated Associations: N.Y. Civil Rights Law § 5-A-53 <i>et seq.</i>	New York Not-For-Profit Corporation Law: N.Y. Bus. Corp. Law § 101 <i>et seq.</i>	New York Limited Liability Company Act: N.Y. Limit Liab. Co. Law §§ 101, 1403	Solicitation and Collection of Funds for Charitable Purposes: N.Y. Exec. Law §§ 171-a to 177; Administration of Charitable Assets (“EPTL”): N.Y. Est. Powers & Trusts Law § 8-14
North Carolina	Uniform Unincorporated Nonprofit Association Act: N.C. Gen. Stat. Ann. § 59B	North Carolina Nonprofit Corporation Act: N.C. Gen. Stat. Ann. §55A	North Carolina Limited Liability Company Act: N.C. Gen. Stat. Ann. § 57D-1-01	Solicitation of Contributions: N.C. Gen. Stat. Ann. §§ 131F-1 to 33
North Dakota	No relevant statutes identified.	Nonprofit Corporation: N.D. Cent. Code §10-33	North Dakota Uniform Limited Liability Company Act: N.D. Cent. Code § 10-32.1 <i>et seq.</i>	Charitable Organizations Soliciting Contributions: N.D. Cent. Code § 50-22-02 <i>et seq.</i>
Ohio	Uniform Unincorporated Nonprofit Association Act: Ohio Code § 1745.05 <i>et seq.</i>	Ohio St. t. XVIII, Ch. 1702	Ohio Limited Liability Company Act: Ohio Rev. Code	Ohio Rev. Code Ann. § 1716.02

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			Ann. §§ 1705.01 <i>et seq.</i>	
Oklahoma	Unincorporated associations defined as “business entities” under Okla. Stat. Ann. tit. 18 § 1090.4	Oklahoma General Corporation Act: Okla. Stat. Ann. tit. 18 § 22; <i>see also</i> Okla. Stat. Ann. tit. 18 § 14, 19	Oklahoma Limited Liability Company Act: Okla. Stat. Ann. Tit. 18	Okla. Stat. Ann. Tit. 18 § 522.1a
Oregon	No relevant statute identified except Or. Rev. Stat. Ann. § 65.001(18) describing unincorporated associations as “entities”.	Or. Rev. Stat. Ann. § 7.65	Uniform Limited Liability Company Act (ULLCA): Or. Rev. Stat. Ann. § 63.001 <i>et seq.</i>	Charitable Solicitations Act: Or. Rev. Stat. Ann. § 128.801 to 898
Pennsylvania	15 Pa. Cons. Stat. § 9101 <i>et seq.</i>	Nonprofit Corporation Law of 1988, as amended: 15 Pa. Const. Stat. §§ 5101-6162	Pennsylvania Uniform Limited Liability Company Act of 2016: 15 Pa. Cons. Stat. § 8811 <i>et seq.</i>	Solicitation of Funds for Charitable Purposes Act: 10 Pa. Cons. Stat. § 162.1 <i>et seq.</i>
Rhode Island	No relevant statute identified except 7 R.I. Gen. Laws Ann. § 7-6-3	Rhode Island Nonprofit Corporation Act: R.I. Gen. Laws	Rhode Island Limited Liability Company Act: R.I. Gen. Laws	Solicitation by Charitable Organizations: R.I. Gen. Laws Ann. § 5-53.1

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		Ann. § 7-6-1 <i>et seq.</i>	Ann. § 7-16-1 <i>et seq.</i>	
South Carolina	No relevant statute identified except S.C. Code Ann. § 33-31-140 treating unincorporated associations as “entities”.	S.C. Code. Ann. § 33-31-101	Uniform Limited Liability Company Act of 1996: S.C. Code Ann. § 33-44-101 <i>et seq.</i>	South Carolina Solicitation of Charitable Funds Act: S.C. Code Ann. § 33-56-10
South Dakota	No relevant statute identified except S.D. Codified Laws § 47-1A-140 defining unincorporated associations as “entities”.	S.D. Codified Laws § 47-22	Uniform Limited Liability Company Act: S.D. Codified Laws § 47-34A-101 <i>et seq.</i>	No applicable law
Tennessee	No relevant statutes identified except Tenn. Code Ann. § 48-511-201(16) defining unincorporated associations as “entities”.	Tennessee Nonprofit Corporation Act: Tenn. Code Ann. § 48-51-68	Tennessee Revised Limited Liability Company Act: Tenn. Code Ann. § 48-249-101 <i>et seq.</i>	Tenn. Code. Ann. § 48-101-504
Texas	Unincorporated Nonprofit Associations: Tex. Bus. Orgs. Code Ann. § 252.001 <i>et seq.</i>	Texas Business Organizations Code – Nonprofit Corporations: Tex. Bus. Orgs. Code Ann. § 22	Limited Liability Companies: Tex. Bus. Orgs. Code	See Texas Law Enforcement Telephone Solicitation Act, Public Safety Solicitation Act,

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			Ann. § 3-101.001	Veterans Solicitation Act.
Utah	No relevant statute identified except Utah Code Ann. § 16-6a-102 defining unincorporated associations as “entities”.	Utah Revised Nonprofit Corporation Act (URNCA): Utah Code Ann. § 16-6a-101 <i>et seq.</i>	Utah Revised Uniform Limited Liability Company Act: Utah Code Ann. § 48-3a-101 <i>et seq.</i>	Utah Charitable Solicitations Act: Utah Code Ann. § 13-22-1 <i>et seq.</i> ; Charitable Solicitations Act Rules, Utah Admin. Code r. 152-22.
Vermont	No relevant statute identified except Vt. Stat. Ann. tit. 11B § 1.40 treating unincorporated associations as “entities”	Vermont Nonprofit Corporation Act. Vt. Stat. Ann. tit. 11B	Limited Liability Companies: Vt. Stat. Ann. Titl 11, § 21-3001 <i>et seq.</i>	Vt. Stat. Ann. tit. 9, §§ 2471-2479.
Virginia	No relevant statute identified except Va. Code Ann. § 13.1-803 treating unincorporated associations as “entities”.	Virginia Nonstock Corporation Act: Va. Code Ann. § 13.1-10	Virginia Limited Liability Company Act: Va. Code Ann. §§ 13.1-1000 <i>et seq.</i>	Virginia Solicitation of Contributions Law: Va. Code Ann. § 57-48 <i>et seq.</i>
Washington	No relevant statute identified.	Washington Nonprofit Corporation Act: Wash. Rev. Code Ann. § 24.24.03	Limited Liability Companies: Wash. Rev. Code Ann. § 25.15.006 <i>et seq.</i>	Charitable Solicitations Act: Wash. Rev. Code Ann. § 19.19.09

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West Virginia	Uniform Unincorporated Nonprofit Association Act: W. Va. Code Ann. § 36-11-1	West Virginia Nonprofit Corporation Act: W. Va. Code Ann. § 31E-1-101 <i>et seq.</i>	Uniform Limited Liability Company Act (ULLCA): W. Va. Code Ann. § 31B-1-101	Solicitation of Charitable Funds Act: West Va. Code Ann. § 29-19-5 <i>et seq.</i>
Wisconsin	Uniform Unincorporated Nonprofit Association Act: Wis. Stat. Ann. § 184.01 <i>et seq.</i>	Wis. Statute on “Nonstock Corporations”: Wis. Stat. Ann. § 181.0103 <i>et seq.</i>	Wisconsin Limited Liability Company Act: Wis. Stat. Ann. §§ 183.0102 <i>et seq.</i>	(Solicitation of Funds for Charitable Purposes): Wis. Stat. Ann. § 202.11 <i>et seq.</i>
Wyoming	Wyoming Unincorporated Nonprofit Association Act: Wyo. Stat. Ann. § 17-22-101	Wyoming Nonprofit Corporation Act: Wyo. Stat. Ann. § 17-19-101 <i>et seq.</i>	Wyoming Limited Liability Company Act (Revised Uniform Limited Liability Company Act): Wyo. Stat. Ann. § 17-29-101 <i>et seq.</i>	No applicable law

COMMONWEALTH OR TERRITORY	UNINCORPORATED	NONPROFIT CORPORATION STATUTE	LIMITED LIABILITY COMPANY	CHARITABLE SOLICITATIONS STATUTE
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	ASSOCIATION STATUTE		Y STATUT E	
American Samoa	No relevant statute identified.	Territorial Coe (general corporation law recognizing only local “eleemosynary” corporations)	American Samoa Limited Liability Company Act	No relevant statute identified.
Federated States of Micronesia	No relevant statute identified.	No relevant statute identified.	Federated States of Micronesia Code – Corporate Laws of 2009	No relevant statute identified.
Guam	No relevant statute identified.	Territorial Code (general corporation law recognizing only local “religious and nonprofit” corporations)	No relevant statute identified.	No relevant statute identified.
Republic of the Marshall Islands	No relevant statute identified.	Non-Profit Corporation Act: 18 MIRC Ch. 2, § 301 <i>et seq.</i>	Limited Liability Company Act of 1996: 52 MIRC Ch. 4 § 1 <i>et seq.</i>	No relevant statute identified.

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Northern Mariana Islands	No relevant statute identified.	General Corporation Statute	Uniform Limited Liability Company Act (adopted per public Law 14-11)	No relevant statute identified.
Republic of Palau	See Corporation Regulations Part 1, Chapter 1: Corporations, Partnerships and Associations defining a non-profit corporation to include associations.	Corporation Regulations Part 1, Chapter 1: Corporations, Partnerships and Associations	No relevant statute identified.	No relevant statute identified.
Puerto Rico	No relevant statute identified.	General Corp. Act, 1995; follows Delaware, limited non-stock provisions	Limited Liability Companies : P.R. Laws titl. 14, § 3951 <i>et seq.</i>	No relevant statute identified.
Virgin Islands	No relevant statute identified.	Nonprofit Corporations: V.I. Code Ann. tit. 13, § 491 <i>et seq.</i>	Uniform Limited Liability Company Act: V.I. Code tit. 13, § 1101	No relevant statute identified.

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APPENDIX B: OTHER RESOURCES

Official Department of Defense Materials:

- PRIVATE ORGANIZATION REGULATIONS:
 - Department of Defense:
 - DoD Instruction 1000.15 (Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations):
<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100015p.pdf>
 - Air Force:
 - Air Force Instruction (AFI) 24-223 (Private Organizations Programs):
<https://www.lajesfss.com/docs/afi34-223PrivateOrganizationsProgram.pdf>
 - Air Force 2019 Private Organization Guide: <https://86fss.com/wp-content/uploads/2020/02/2019-Private-Organization-Guide.pdf>
 - Air Force Services Activity Private Organizations Guide:
<https://nellislife.com/wp-content/uploads/2018/02/Private-Organization-Guide.pdf>
 - Army
 - Army Regulation (AR) 210-22 (Private Organizations on Department of the Army Installations):
<https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:1c5a856d-f9a8-4b23-99f7-c618dc36b2e7>
 - Navy
 - No published documents found at this time
 - Marines
 - Marine Corps Order 5760.4c (Procedures and Support for Non-Federal Entities Authorized to Operate on Marine Corps Installations and Informal Funds):
<https://www.marines.mil/Portals/1/Publications/MCO%205760.4C.pdf>
 - Base-specific orders for overseas bases
 - Marine Corps Installations Pacific Order 5760.1 (Support for Non-Federal Entities and Fundraising):
https://www.mcipac.marines.mil/Portals/28/Documents/SJA/MCIPACO_5760.1-NFE_Support.pdf

Websites:

- Military Spouse JD Network: <https://www.msjudn.org>
- Military Spouse JD Network Foundation: <https://www.msjudn.org/msjdf/>

IRS Forms and Publications:

1. Obtaining an EIN: <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>
 - Form SS-4: <https://www.irs.gov/forms-pubs/about-form-ss-4>

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2. Search of Recognized § 501(c)(3) entities
 - Business Master File: <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>
3. Obtaining Copy of Tax Exempt Determination Letter
 - Form 4506-A: <https://www.irs.gov/pub/irs-pdf/f4506a.pdf>
4. Applying for Tax Exempt Status
 - Form 1023: <https://www.irs.gov/forms-pubs/about-form-1023>
 - Form 1023-EZ: <https://www.irs.gov/forms-pubs/about-form-1023-ez>
 - Form 1024 and Form 1024-A: <https://www.irs.gov/forms-pubs/about-form-1024>
 - Form 8718: <https://www.irs.gov/pub/irs-pdf/f8718.pdf>
 - Publication 557 (Tax-Exempt Status for Your Organization): <https://www.irs.gov/pub/irs-pdf/p557.pdf>
5. Annual Tax Reporting
 - Form 1120: <https://www.irs.gov/forms-pubs/about-form-1120>
 - Form 990: <https://www.irs.gov/forms-pubs/about-form-990>
 - Form 990-N: <https://www.irs.gov/charities-non-profits/annual-electronic-notice-form-990-n-for-small-organizations-faqs-how-to-file>
 - Form 990-EZ: <https://www.irs.gov/forms-pubs/about-form-990-ez>
 - Form 990-T: <https://www.irs.gov/forms-pubs/about-form-990-t>

Relevant Facebook Groups:

- Military Spouse JD Network: <https://www.facebook.com/MilitarySpouseJDNetwork/>
- Military Spouse Club Leadership Forum: <https://www.facebook.com/groups/1436738063038868/>
- Military Spouse Financial Counselors: <https://www.facebook.com/groups/MilSpouseAFC/>
- Military Spouse Financial Professionals: <https://www.facebook.com/groups/MilSpouseAFC/>
- Bookkeeping Side Hustle Group: <https://www.facebook.com/groups/BookkeepingSideHustleGroup/>

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