

Questions & Answers from IRS and Chapter Incorporation Skype Presentation

Question 1: Some of the members asked whether there was an alternative to incorporating the chapters. A scenario was mentioned where there would be 1 incorporated entity and the chapters would be considered divisions of the entity. It was also mentioned that (1) our current organizational structure would not lend itself to this model (2) the law doesn't provide much guidance on it and (3) this scenario doesn't have the same safeguards as incorporating the chapters would.

Answer to Question 1: If you were to adopt the parent/divisions alternative to individual chapter incorporation, the division would not have the same autonomy as exists in your organization at the moment, where there is little or no control from above and similarly, no significant reporting up. If you think about this type of scenario in the for-profit world, management of the division is usually imposed on the division by the corporate parent and the division carries out the functions determined by the parent with budgets etc. often controlled by the parent. In addition any liability arising at the division level would still flow through to the parent organization because of the single entity set-up. Therefore the liability limiting benefits that the state organization would gain by incorporating each of the chapters would be lost.

Question 2: Liability insurance. Many of our members believe that the liability insurance they pay provides the same protections as chapter incorporation. Could you please provide some guidance?

Answer to Question 2: It was suggested a long time ago that the organization should be having discussions with its insurance carrier(s) to make sure that the state and local organizations are adequately insured and to discuss what kinds of claims might not be covered under the policies in place. If liability issues arise at the chapter level that are not covered by current policies or are uninsurable the only way to limit exposure is separate the organization in the way it has been suggested. However, if all potential liabilities can be adequately insured against at an aggregate cost over the years for less than the cost of incorporating, then perhaps that is a viable alternative.

Question 3: Incorporated chapters: 3-4 chapters are already incorporated but not filing 990s or e-postcards with the IRS. These chapters are concerned that they will get into trouble with the IRS once all chapters incorporate and start filing 990s/e-postcards with the IRS. Is this concern warranted?

Answer to Question 3: If the incorporated chapters are not filing the correct tax forms they are violating the law already, whether the rest of the chapters incorporate or not. If they are not individually tax-exempt organizations or covered under a group exemption of the state organization they are probably taxable entities. I believe Joe explained that usually the IRS is more concerned with compliance than penalties, so it would be prudent for any chapter that is not filing tax returns or reports to do so.

Question 4: Region incorporation: This concept has not been brought up until now. The regions do not have bylaws, only guidelines but they do have bank accounts and hold meetings. Do you suggest incorporating the regions? Many chapters comprise 1 region.

Answer to Question 4: Splitting the organization into incorporated regions would reduce risk to the state organization and each of the other regional organizations if one region were to experience a liability issue. However it would not reduce the exposure of the other chapters within the region.