

## Update on Tax Issues Impacting Voluntary Fire Relief Associations

Provided By:

**The Minnesota Area Relief Association  
Minnesota State Fire Chiefs Association  
Minnesota State Fire Department Association**

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### **Background on Current Law and IRS Enforcement Efforts**

As a general rule, non-profit organizations secure an exemption from income tax by submitting an application to the IRS, and they preserve their tax exempt status by filing annual information returns (Form 990) each year. There are a number of exceptions to this general rule that allow certain non-profit organizations to operate as tax exempt without filing a formal application or filing 990s on an annual basis. In recent years, some in Congress became concerned that there were too many tax exempt organizations relying on these exemptions and operating without IRS oversight. In an effort to address this issue, Congress passed the Pension Protection Act of 2006, which directed the IRS to revoke the tax exemption of any nonprofit organization that: (A) the IRS believes is required to file an annual information return (Form 990); and (B) fails to do so for three consecutive years. This law went into effect in 2007, so May 17, 2010 was the first filing deadline that could trigger automatic revocations (for those organizations that were required to file 990s for the 2007, 2008 and 2009 tax years and failed to do so).

In December 2010, the IRS published a list of tax exempt organizations the IRS claimed met the conditions for automatic revocation. On June 8, 2011, the IRS published a list of tax exempt organizations subject to automatic revocation and began sending revocation letters to each of the affected organizations. The revocations are to be effective as of the due date for the third consecutive 990 that the tax exempt organization failed to file. For organizations operating on a calendar year that have not filed a 990 since the Pension Protection Act went into effect in 2007, the automatic revocation would be effective as of May 15, 2010.

***There are 57 MN VFRA's on the automatic revocation list. The full list of organizations subject to automatic revocation may be downloaded at <http://www.irs.gov/charities/article/0,,id=96136,00.html>. The IRS has also published a list of Frequently Asked Questions on automatic revocation. We are attaching a copy of the FAQs, which are also available at <http://www.irs.gov/charities/article/0,,id=221600,00.html>. It is important to note that the IRS has indicated that they will be periodically updating the list, so organizations that do not appear on the current list should check back periodically to be certain they have not been added.***

### **Tax Status of MN VFRA's**

Virtually all MN VFRA's were formed as Minnesota nonprofit corporations. Unfortunately, there is no such uniformity when it comes to the tax status of MN VFRA's. While the variance among the VFRA's cannot be explained by any one factor (time of formation, philosophy of tax advisors, structure of VFRA, etc. are all contributing factors) inconsistent guidance from the IRS has been a significant issue. Because of the confused state of the law and inconsistent IRS statements, many MN VFRA's concluded that they did not need to file an application in order to operate as a tax exempt organization. Other MN VFRA's that did file an application for exemption interpreted the regulations and IRS guidance as exempting them from the 990 filing requirements

applicable to most tax-exempt organizations. From our preliminary review of this issue, it appears that the vast majority of MN VFRA's fall into one of four general categories when it comes to tax status:

1. Those that sought and received a tax exemption under Internal Revenue Code Sections 501(c)(3) or 501(c)(4) and a letter from the IRS that they were not required to file Form 990.
2. Those that sought and received an exemption under Internal Revenue Code Sections 501(c)(3) or 501(c)(4) and have filed their annual information returns (Form 990) each year.
3. Those that sought and received an exemption under Internal Revenue Code Sections 501(c)(3) or 501(c)(4) and subsequently stopped filing returns based on their belief that they were exempt from the Form 990 filing requirement.
4. Those that never affirmatively sought a formal exemption but believed they were exempt organizations.

The VFRA's in category 1 have a letter saying they are not required to file a 990 and therefore should not be on the IRS automatic revocation list. Any VFRA's in category 1 that are on the automatic revocation list should have a relatively easy time fixing the issue. The VFRA's in category 2 have filed their 990s on an annual basis and therefore should not be on the list. If a category 2 VFRA does appear on the list, it should be able to resolve the issue by providing proof of filing. Presumably, all of the VFRA's in category 3 will be on the list. The VFRA's in category 4 have never made contact with the IRS and are therefore not on the IRS "radar". For those in category 4, the fact that they are not on the list is not an indication that their exemption has not been revoked, but rather an indication that the IRS has never recognized them as being tax exempt in the first place.

MN VFRA's in categories 1 and 2 are in a relatively good position. That said, because of the complex nature of these issues and the sheer number of tax exempt organizations being tracked by the IRS, it is likely that the automatic revocation list will contain mistakes, and we would encourage VFRA's in categories 1 and 2 to contact their tax advisors to ensure that they are in good standing with the IRS.

Unfortunately, we believe that the majority of MN VFRA's fall into categories 3 and 4. For those in category 3 (all of whom should be on the automatic revocation list), it will be important to move quickly to restore tax exempt status.

Those organizations in category 4 will need to act to ensure that they secure their tax exempt status for the long term. As discussed above, the fact that these organizations are not on the automatic revocation list does not mean that they don't have a pressing tax issue.

### **The Coalition and its Role**

The Minnesota State Fire Chiefs Association, Minnesota State Fire Department Association and Minnesota Area Relief Association have formed a coalition with several other large reliefs who have agreed to help fund and guide our efforts to resolve these issues. The coalition has two very specific goals:

- A. To help foster communication and to provide MN VFRA's with general information regarding current developments on this issue; and
- B. To seek a political or administrative solution (or a combination of both) that will allow MN VFRA's to be recognized as tax exempt organizations not required to file 990s.

The coalition has retained the law firm of Best & Flanagan LLP to assist in this effort. In addition, we are working with State Auditor Rebecca Otto and Tom Grundhoefer at the League of Minnesota Cities, who have supported our efforts to resolve this issue.

Each MN VFRA ultimately has to make an independent decision about how best to resolve its own tax issues. That being said, we feel strongly that communication and cooperation among all the VFRA's is the only way to achieve a global solution that benefits all of us. The coalition's main goal is to help foster that communication and cooperation.

### **Next Steps**

Please be advised that while the coalition is working with its attorneys to provide general plans of action and guidance, and template response letters for MN VFRA's in each of the four categories described above, the coalition and its attorneys will not be representing individual VFRA's before the IRS. Each VFRA will need to respond to anything it receives from the IRS in a timely manner and otherwise ensure that its own tax-exempt status is preserved. VFRA's can represent themselves or utilize their tax advisors in this regard. The coalition is also working with Best & Flanagan on a reduced rate schedule for VFRA's seeking direct representation from the coalition's attorneys. Please contact Nyle Zikmund if you are interested in this option.

We expect to circulate additional information to MN VFRA's in the coming weeks. In the meantime, please don't hesitate to contact Nyle Zikmund at [nzikmund@sbfire.com](mailto:nzikmund@sbfire.com) or at 612-860-7442 with any specific questions or concerns you might have.

Thank you for your attention to this important matter. We all look forward to resolving these issues as soon as possible.