



NETWORK BUSINESS, INSURANCE & LEGAL ISSUES

THIS SECTION AT A GLANCE

Federal Employer ID Number (FEIN)

- Every local and state Network should get one
- Identifies companies and organizations, like a SSN does individuals
- Banks require to open most banking accounts, especially when the account earns interest
- Apply for a FEIN on line: <https://sa2.www4.irs.gov/modiein/individual/index.jsp>
- Your new number will be provided at the end of the process
- Record this number in the Network Management Center for future officer reference

Reporting to the IRS and Tax-Exempt Status

- Effective with the 2007 tax year, every local and state Network must file an information return with the IRS
- In the past the IRS did not require any filings from tax exempt organizations with revenue in the \$0 - \$50,000 range, but now they do
- Networks filing a regular 990 return should continue to do so; small Networks may file on line at: <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>
- In order to file, the state or local Network must be deemed exempt by the IRS. Use IRS Form 1024 available here: <http://www.irs.gov/pub/irs-pdf/f1024.pdf>
- Information form 990 is generally needed when annual Network gross income or assets are \$50,000 or more.
- Even tax-exempt Networks have to pay “Unrelated Business Income Tax”

Incorporation

- Provides personal liability protection beyond that of the Network’s bylaws
- Being incorporated as a not-for-profit association is not the same as being federally tax exempt.
- The common term “501(c)(6)” refers to the section of the IRS Tax Code that covers real estate and other trade associations, also known as Business Leagues.

Sales Tax

- Generally speaking, Networks will not be exempt from paying retail sales tax. Tax exempt status means there is no federal tax on revenue.

Defense and Indemnification of Officers and Directors

- Networks are covered under the NAR Professional Liability Insurance Policy
- Claims for general liability, theft or bodily injury are NOT covered by this policy – Networks should always get event insurance
- The PL policy has a deductible for local Networks of \$3,000, \$6,000 for State Networks and \$20,000 for national Council.

General Liability (e.g. Bodily Harm) Insurance

- Sometimes required when holding a Network event on public or private property
- Network must arrange coverage, usually through a local insurance agent (coverage not available from national Council)
- Limit your liability when serving alcohol at your events (see tips below)

DETAILED INFORMATION

Re: Federal Employer ID Number (FEIN)

Q: What is the purpose of a federal employee identification number (FEIN)?

A: It is used by the IRS as a unique identifier, the business equivalent of a Social Security Number.

Q: Should all WCR Networks obtain an identifying number?

A: Yes. Having this number means that members do not need to use their Social Security Numbers for such things as opening bank accounts. It is also needed to apply to the IRS for federal income tax exempt status. This number is also sometimes required by banks when opening accounts and local affiliates when paying their company pays their dues.

Q: Are contributions to our Network from sponsors tax-deductible for the sponsors?

A: Expenses are not subject to a charitable deduction; however their contribution is probably fully deductible as a business expense.

Q: May a State or Local Network use the employer identification number of national Council?

A: No. Each State and Local Network, although affiliated with the national Council, is a separate entity that must obtain its own identification number. Similarly, a State or Local Network would not be able to use the employer identification number of a Local Board of REALTORS®.

Q: Will a Network be subject to any penalties upon application for FEIN if they had previously failed to apply for one or had used their Local Board's FEIN?

A: There are no penalties associated with applying for and receiving an FEIN. Penalties accrue only for failure to pay taxes which were due or failing to file required forms such as the Form 990 information return.

Q: Should our Network file tax forms if it doesn't have an employer identification number?

- A: Returns should always be filed when required under the tax laws. While a Network should have an employer identification number to identify itself on its tax returns, the lack of an identification number should not be viewed as an acceptable reason not to file appropriate returns.
- Q: If a Network has an FEIN, is it required to file tax returns every year, even in years when no tax is due?
- A: Obtaining a FEIN does not change any of the requirements relating to filing tax returns. The fact that the Network has a FEIN does not change the situation. Conversely, if a return would be required by the IRS Code, the fact that a Network has not previously obtained an FEIN is not a shield against any penalties the IRS may impose.
- Q: Will our Network save money if it obtains an employer identification number?
- A: No. The number is used for administrative purposes only. Obtaining a number does not mean that the Network is tax-exempt or that the tax structure would be any different.

Tax-Exempt Status

- Q: Is it difficult for a Network to achieve tax-exempt status? What type of information is required to request and obtain that status?
- A: No, the filing process is relatively straightforward, though detailed information must be provided. For a 501(c)(6) organization like a Women's Council Network, IRS Form 1024 Application for Recognition of Exemption and the Network's Articles of Incorporation (if any) and the Network's bylaws must be submitted. Financial data for the Network and other information about the Network's activities will also be required as a part of the process.
- Q: What are the benefits of having tax-exempt status?
- A: The principal benefit is exemption from federal income taxes on income related to the organization's exempt purpose, including dues income. Tax-exempt status is also required in order to file the ePostcard 990-N on line. Additional benefits may arise out of interrelationship between federal tax status and the taxing policies of various states and localities. Networks should check with their local counsel for these potential benefits.
- Q: Does a Network which has obtained federal tax-exempt status also qualify automatically for state and local tax exempt status?
- A: In some cases yes, but not necessarily. The laws of some, but not all, jurisdictions provide that organizations exempt from federal income tax are also exempt from income taxes imposed by the state or local jurisdiction. Because such laws vary, however, each Network needs to consult with their tax advisor to determine their status under state or local law.

Q: If we have tax exempt status from our state, does that exempt us from income as well as sales tax?

A: Generally, each type of tax is evaluated separately (income, franchise, excise, estate/gift, sales/use, etc.) and there is no overall exemption that applies to all taxes.

Q: In what areas does a Network save money if it has tax-exempt status?

A: The principal and possibly only area will be in the federal income taxes, which the Network might otherwise have to pay. Note also that federal tax-exempt status applies only to income taxes and does not generally entitle a Network to exemption from state or local sales or property taxes.

Q: What is an incidental activity? Is this the same as unrelated business activity?

A: Although the IRS has never established an exact level at which an activity is no longer considered incidental to the primary purpose of an organization, as a general rule of thumb not more than 30% of a Network's gross revenues can be generated from an activity which does not further the exempt purposes of the organization.

Membership dues and fees for educational programs aren't subject to this 30% rule of thumb, because they relate to the exempt purposes of the organization. On the other hand, paid advertising in a newsletter, which would not be considered to further the organization's tax-exempt purposes, would be considered a "trade or business," the income from which would be taxable. The amount taxable would be computed by taking the gross income derived from the activity, less any deductions attributable to the costs of producing such income. If the net revenue after expenses is in excess of \$1,000.00, it is taxed at the corporate rate.

Q: When must the tax on unrelated business income be paid?

A: The tax return for unrelated business income is filed on Form 990-T, "Exempt Organization Business Income Tax Return" which is due the 15th of the third (3rd) month following the close of the tax year. Tax estimated must be paid quarterly.

Q: Why does a tax-exempt organization have to pay on unrelated business income?

A: Income from unrelated business activities of exempt organizations is taxed to prevent such organizations from using their status as exempt organizations to gain an unfair advantage over profit making, taxable businesses that are involved in a similar trade or business.

Q: Do Networks need to pay sales tax on items purchased, even if the Network is recognized as Tax-Exempt?

A: Yes, the exemption does not apply to sales tax. However, if what you are purchasing are items that will be resold Sales tax *may* not have to be paid.

Q: Do Networks need to pay sales tax on the items purchased for resale?

A: Generally speaking, yes, but there is an exception. While sales tax usually only applies to retail sales, all sales are presumed to be retail sales unless the seller demonstrates otherwise (e.g. the seller has a resale certificate exemption from the buyer indicating that the sale should be exempt under state law). The resale exemption is allowed because the intermediate sale does not represent the ultimate use or final consumption of the product. To receive this exemption, the seller must inquire about the intended use of goods at the time of sale. Receipt of a resale certificate typically exempts sales for resale from sales tax. The requirements of the resale certificate differ among the states so your Network needs to seek advice based upon their particular state law

Q: Do we need to collect state taxes on the products we sell?

A: Collection of sales tax hinges on “nexus,” which is whether or not a company has sufficient activity within a state to be subject to the state’s taxing authority. If Networks have nexus in a given state and do not receive a resale or other exemption certificate, a duty to collect sales tax on items sold at retail that are not listed under the particular state’s exempted items exists. Each state’s exemption list is different as are the rates of taxation. Again, State and Local Networks should seek advice regarding their state’s exemptions and rates.

Q: Do we need to file any forms with the state before we can be exempt from paying state sales tax?

A: Sellers are exempt from the collection of sales/tax if they receive a resale certificate from the buyer. To obtain a resale certificate, you must generally provide the following information:

- Date
- Name, address, signature and title of purchaser
- Statement that the property is purchased for resale
- Tangible personal property sold by the purchaser in the regular course of business

A resale certificate may be for a single purchase or a blanket resale certificate may be issued. Generally, vendors required to collect sales tax need to have a tax registration number. However, in some states where the only sales are for resale purchases, this requirement does not apply. Again, your Networks need to seek advice on their own state’s policies.

Q: Would the answer to the question above be different if incorporated versus unincorporated?

A: No. If the nexus requirements are satisfied and there is no exemption available, whether the entity is incorporated or unincorporated will have no bearing upon its sales tax responsibilities.

Fund-raising activities

Q: If the Network is tax-exempt, does it have to pay federal income tax on money raised for a charity through various fund-raising activities such as raffles, auctions, bingo games and dinner dances?

A: Generally, no. The best way to ensure that proceeds collected for a charity will not be considered income to the Network, and to clearly preserve the tax deductibility of the donors’ contributions, is to have donors make their checks payable directly to the charity being supported. Another method is to expressly indicate to donors that the Network is acting as a “conduit” or “agent” of the charity in soliciting and collecting funds. The Network should also maintain clear and consistent records of the collection of such funds and subsequent transfer of them to the charity.

- Q: Can a Network hold fund-raising raffles or bingo games in any state? Does it make a difference if the raffle/bingo game proceeds are for a charity or for the Network treasury?
- A: These issues will depend upon the laws of the state in which the Network is located. The fund-raising methods discussed are often considered a form of gambling and regulated as such. Regulations could include total bans or could simply restrict who may benefit from such activities. Networks should consult local authorities or their own counsel to determine the answer to these questions.
- Q: Does a Network pay income tax on funds raised for charity if those funds are given immediately and directly to the charity?
- A: Generally speaking, no. Such events do not normally constitute “unrelated business income” subject to taxation. Such income is generated by activities which are a “trade or business” and which are “regularly carried on”. Most Network fund-raising events do not involve trade or business activities, and occur only infrequently or intermittently, rather than regularly. Moreover, the definition of “unrelated trade or business” excludes activities where all or substantially all the work in carrying on such activity is performed by volunteers working without compensation, which is ordinarily the case for Network fund-raising events.
- Q: Monies collected during a charity fund-raiser were deposited to the Network’s bank account and held there until the charity was paid. Does the Network pay taxes on the interest earned if the proceeds plus interest were given to the charity? Or can the Network keep the interest?
- A: If the Network is acting as an “agent” for the charity, then such interest should also be provided to the charity. If the Network has merely collected money for the charity and promptly forwarded it to the charity, as it should, then there will be very little interest earned on the money.

Incorporation

- Q: Why should a small Network incorporate?
- A: Incorporation provides continuity of existence, which will help insure the continuation of the Network after those active in Network operations at any particular time become less involved. Incorporation also provides personal liability protection for officers, directors and members of the Network, which might otherwise not exist for an unincorporated Network. Finally, in some cases, other parties with whom the Network wants to enter into transactions of various kinds, such as financial institutions or vendors of various goods or services, prefer to deal with incorporated organizations with which they are familiar than those which are unincorporated.
- Q: Can a Network be tax exempt even if it is not incorporated?
- A: Yes, although the Internal Revenue Service better understands incorporated organizations.
- Q: What’s the difference between becoming incorporated under our state’s not-for-profit corporation act and being tax exempt? Aren’t they the same thing?
- A: No. An organization which is incorporated but did not secure exempt status as permitted under Section 501(c)(6) would be taxed on dues and all other income, while an incorporated Network which did secure 501(c)(6) status is taxable only on “unrelated business income.”

INCORPORATION OF NETWORKS

It is often useful and beneficial to incorporate when the activities, financial obligations, and undertakings of the Network are substantial. Incorporation clearly establishes continuity of existence, and allows the Network to more conveniently undertake contractual commitments, establish financial accounts and otherwise act as a business organization. Another significant benefit to incorporation is to limit any liability which may arise out of Network activities to the Network itself, and to shield individual members from personal liability for such activities. While the incorporation of a Network should be undertaken with the aid of legal counsel, the following is an outline of the general procedures for the incorporation.

1. The state of incorporation must first be determined. The home state of the Network will more than likely be the most appropriate state for incorporation. Your legal counsel may suggest another state if that would be more beneficial.

2. Once the state of incorporation has been selected, Articles of Incorporation satisfying the particular requirements of law of the state of incorporation must be drafted. Most states have an on-line form to use for this purpose. The Articles generally include the following:
 - a. The names(s) of the incorporator of the corporation who will execute the Articles. The required number and qualifications of incorporators will vary from state to state;
 - b. The name of the corporation;
 - c. The duration of the corporation, which is usually perpetual;
 - d. The principal or registered office, and the registered agent of the corporation (if the registered agent is the president, who changes every year, updated information will need to be filed annually with the state agency);
 - e. A statement that the incorporators intend to create the corporation and a statement setting forth the corporate purpose. The corporate purpose should be worded in such a manner so that the Network can meet the requirements for tax-exempt status under the Internal Revenue Code 501(c)(6). That section requires that the corporation be organized to promote the common business conditions as a whole, rather than to provide particular services to individual members;
 - f. The names and addresses of the initial Board of Directors. This Board will have the

responsibility to meet to initiate the corporate existence and operation. In particular, the initial Board will adopt bylaws which will govern the corporation. Your particular state of incorporation may require further information to be included in Articles of Incorporation. Legal counsel assisting in incorporating the Network will provide advice concerning all other requirements of state corporate or income tax law.

3. Once completed, the Articles of Incorporation should be delivered for filing to the appropriate state office, usually the Secretary of State's Office, along with the necessary filing fee. If the Articles conform to law, the Secretary of State will issue a Certificate of Incorporation to the Network, which usually must be recorded in the county office where the corporation's principal office is located.

4. If the Network incorporates in a state than its home state, the Network ordinarily will need to register to conduct business in its home state. Forms for this purpose are typically filed with the latter state's Secretary of State, along with any filing fee. Once your Network is incorporated, there is usually a requirement that a brief Annual Report be filed each year. In some states, the Secretary of State will send the Annual Report to the registered agent each year. In other states, it must be requested from Secretary of State. The Network must also maintain a corporate record book which will contain the Articles of Incorporation, bylaws, Certificate of Incorporation, minutes of all meetings of the membership and Board of Directors, and any other corporate documents required to be permanently preserved. Again, the Network should consult legal counsel for the particulars of incorporation in the most appropriate state and for maintaining the appropriate corporate records.

INSURANCE COVERAGE

I. Professional Liability Insurance Policy

The NATIONAL ASSOCIATION OF REALTORS® Professional Liability Insurance Policy provides professional liability coverage to NAR, its State Associations and Local Boards, and all incorporated and unincorporated Institutes, Societies and Councils and their respective Networks. This means that the policy extends coverage to the Women’s Council of REALTORS®, and its Networks, including directors, officers, volunteers and staff while acting within the scope of their authority. Coverage is extended to the Networks whether or not the Network is separately incorporated.

Since the policy provides coverage for the entire NAR organization, the policy premium is paid out of dues. Thus, there are no additional costs to WCR or its Networks for coverage. Coverage is not automatic but is extended to WCR and its Networks as long as their governing documents and operations conform to the Constitution and bylaws of NAR and the policies adopted, and amended from time to time, by the Board of Directors of NAR.

There are two primary insuring clauses in the policy. Insuring Clause 1A provides coverage for claims arising out of the providing of professional services to members. Under this clause, both attorney fees and liability costs are paid, subject to the policy limits of liability and deductibles (\$3,000 deductible for local Networks, \$6,000 deductible for state Networks and \$20,000 deductible for national).

The second insuring clause is Insuring Clause 1B. The claims covered under 1B are limited to seven areas, and only attorney fees and cost (not liability) are covered. The seven areas are; 1) antitrust and restraint of trade; 2) civil rights and fair housing; 3) lockbox claims; 4) sexual harassment claims, 5) claims dealing with wrongful termination; 6) claims relating to copyright infringement of an MLS and 7) claims relating to the operation of NAR’s Dispute Resolution System. Portions of this coverage may not be significant to WCR Networks depending on how they are structured or operated. Coverage for wrongful termination claims, for instance, is of no consequence to a Network which has no employees. Moreover, there are certain conditions and limitations on coverage as well as several exclusions. For example, claims of theft or fraud by Network officers in the handling of Network funds is excluded from coverage. Each Network should familiarize itself with the policy and its coverage in order to comply with conditions and/or recognize areas which may require supplemental coverage. Where there is a conflict between policy language and any of the foregoing the policy language will control. More information regarding the details of this insurance coverage can be obtained from the NAR General Counsel.

II. General Liability and Fidelity Insurance

The insurance coverage provided by NAR does not include general liability or fidelity coverage. General liability coverage applies to Network liability arising out of claims for bodily injury, property damage, host liquor law liability, and the like. Such coverage is particularly important where the Network owns or rents property, such as a Network office, but may also be beneficial in other contexts. Networks should consider obtaining such coverage, and consult with an insurance broker or legal counsel regarding the extent of coverage which may be desirable.

Each Network should also consider fidelity coverage for the Network and its directors and officers. Although particular terms of coverage vary from policy to policy, fidelity coverage generally indemnifies the insured against loss incurred due to dishonesty of designated persons. For example, this type of coverage would indemnify a Network in the event there was an embezzlement of Network funds.

III. Liability recommendations when serving alcohol

There's nothing like serving wine and cocktails to get a party going. But make sure you're doing it in a way that won't create unnecessary liability for your Network.

That could happen not just if one of your members or guests over-indulges but also if you fail to heed state or local laws that prohibit activities such as allowing an underage person to drink alcohol. Beyond that, here are some tips for protecting your Network at events where alcohol is served.

1. Get general liability coverage for your event.

Local and state Networks are covered by National Women's Council for professional liability matters, but not for general liability (often called "slip and fall") coverage. Contact your local insurance agent for rates and details. And by the way, it's not a bad idea to consider this kind of liability coverage for all your Network meetings, not just those where alcohol is served.

2. Keep a server between the alcohol and your members.

And don't let volunteers serve the drinks. They're not trained to spot fake IDs or evaluate levels of intoxication.

3. Limit drinks.

Offer no more than two free drinks. Above that, have guests pay at a cash bar. Don't have a self-serve bar.

4. Limit the time period for serving.

Consider stopping service an hour before the event ends.

5. Don't make a last call announcement.

It can encourage hasty, last-minute consumption.

6. Include non-alcoholic alternatives.

7. Provide alternative transportation information.

Include taxi company phone number or even ask a volunteer to serve as a designated driver in case somebody needs a ride.

There's no reason you and your members can't have a pleasant time at your events if you structure them with these few simple precautions in mind.