

2021 Spring Board Meeting
American Iris Society
Report of General Counsel

2021 Annual Convention – Las Cruces, NM

I consulted with Convention Chair Howie Dash, AIS President Jody Nolin, and 1ST Vice President Andi Rivarola regarding the continuing COVID-19 pandemic, AIS contractual obligations, and the rescheduling and rebooking of the convention for 2022. There were similar concerns to 2020 regarding contractual cancellation and the extent of New Mexico's group meetings restrictions would impose additional liability on AIS with regard to the hotel meeting contract. We believe the rebooking has gone well and both sides are monitoring developments in New Mexico. The key concern is trying to downsize the AIS booking commitment pro rata with any with group meeting restrictions.

IRS Group Exemption.

This continues to be a major learning curve for me. It is also apparently a major problem for the IRS, which has issued a proposed revenue procedure for the management and governance of affiliate organizations under a group exemption. I am not in a position to make a recommendation yet to the Board, but thanks to Jody's and Jill's efforts we are working hard to make the necessary group filings. Bob Plank's and Veronica Johnson's records are voluminous and extensive, but I am still having issues getting a handle on both the base AIS exemption and the affiliate procedures. All subgroups under the AIS exemptions are called "affiliates" by the IRS (whether clubs, sections, or regions). We have recurring problems with affiliates (particularly sections and regions spanning more than one state) changing the locations of their key officers and: (1) not being able to change bank account signatories; (2) dealing with third parties who want proof of non-profit status beyond their group letter; and (3) dealing with governmental agencies with proof of non-profit status beyond their group letter.

The group exemption rules are about to change. Proposed revenue procedures were released by the IRS in May of 2020, with comments due in August 2020, but the IRS has still not issued its guidance. Attached Exhibit A summarizes the major impact of the new rules, and there are some grandfathering provisions that make the rules prospective to new affiliates. However, whether new rules or old, the subordinate affiliates must be "subject to its (the national exempt organization) general supervision and control." Hopefully this can be as simple as a set of reporting rules embodied in an annual affiliate form report, and approval of local officers of affiliates, but I do not know at this time and I'm researching further.

Affiliate Organizations

There is some confusion regarding the difference between exemption from federal income tax, and thus eligible for receiving tax deductible donations, and being a non-profit entity for state purposes. The later requires an affiliate to register in their home state as a non-profit entity. This is a real

problem for regions and sections that move operations as the officers change, and the new state where their president or treasurer resides gets confused wanting them to register in the new state, which in effect creates a new duplicate entity. I am hoping to put together a more comprehensive guideline to help them understand they need ONE home state for permanent registration, then when officers switch to different states they need only register in their new state as a foreign (out of state) business doing business in that state. This will permit bankers and others to recognize the entity and establish accounts.

Some affiliates (especially local clubs) do not register in their home state and rely solely on the IRS determination letter of the AIS. I have not yet figured out what to do on this.

AIS and Affiliate Records.

Another of my struggles. Veronica's firm did a great job of organizing record files, but I am still missing a lot of basic information (it may all be in there but hard to locate). I would propose we proceed by creating a digital archive of current information for AIS and each of the affiliates, with their respective state incorporation certificate, any other state authorizations, by-laws, and current slate of officers and directors. This will be much easier to keep up to date, but AIS will have to (and actually is required to) mandate that all current by-laws and future revisions be submitted to the national organization.

Request for Opinions of Counsel

I will apologize up front for the delays and difficulty of getting opinions from me during this first year, particularly due to the COVID pandemic and general economic conditions. Hopefully this year will be better, especially as I get a handle on the records situation and continue my "learning on the job" about non profit organizations.

One thing I do need from the board is support for an opinion request procedure:

1. Depending upon the type of matter:
 - a. General Requests: copy the AIS president, vice president, and treasurer. It is important that the officers know about these requests and most, if not all, of the requests I've received the last year require input or knowledge of the treasurer.
 - b. Personnel or Confidential Matters: copy the AIS president only until I can make an initial determination as to nature and scope of the issue.
2. Try to be specific about the urgency of the matter, particularly if it is preventing your current operations.
3. Attach scans of any relevant documents, letters, or emails involved with the problem.

EXHIBIT A

Central organization's relationship with subordinate organizations

Consistent with Revenue Procedure 80-27, the proposed revenue procedure would require a central organization to establish that each subordinate organization included in the group exemption be affiliated with the central organization and subject to its general supervision or control. Unlike Revenue Procedure 80-27, however, the proposed revenue procedure defines, and would require subordinates to meet (subject to the grandfather rule — see later) the conditions of *affiliation*, *general supervision*, and *control*.

1. Affiliation: A subordinate organization's affiliation with the central organization is demonstrated by the information required to be submitted when requesting a group exemption letter from the IRS, including information on the central organization's general supervision or control and the subordinate's purposes and activities.
2. General supervision: A subordinate organization is subject to the central organization's general supervision if the central organization (a) annually obtains, reviews, and retains information on the subordinate organization's finances, activities, and compliance with annual filing requirements; and (b) transmits written information to (or otherwise educates) the subordinate organization about the requirements to maintain tax-exempt status under the appropriate paragraph of IRC Section 501(c), including annual filing requirements.
3. Control: A subordinate organization is subject to the central organization's control if (a) the central organization appoints a majority of the subordinate organization's officers, directors, or trustees; or (b) a majority of the subordinate organization's officers, directors, or trustees are officers, directors, or trustees of the central organization....

Transition Period. Revenue Procedure 80-27 remains in effect until the revenue procedure proposed in Notice 2020-36 is published in final form. When a final revenue procedure is published, it will apply to preexisting group exemptions, although there would be a one-year transition period to comply with the requirements that a central organization (1) have at least one subordinate organization, and (2) maintain only one group exemption.

Grandfather Rule. The following definitions and rules would not apply to preexisting subordinate organizations that were in group exemptions before the date the final revenue procedure is published:

- The definitions of "general supervision" or "control"
- The matching, foundation classification, similar purpose, and uniform governing instrument requirements
- The prohibition against including Type III supporting organizations in group exemptions

In place of these definitions and rules, the following rules in Revenue Procedure 80-27 would apply for preexisting subordinate organizations:

- All preexisting subordinate organizations must all be described in the same paragraph of IRC Section 501(c), but their central organization may be described under a different paragraph of IRC Section 501(c).
- Preexisting subordinate organizations described in IRC Section 501(c)(3) may be classified in any paragraph of IRC Section 509(a).
- Each preexisting subordinate organization may have a different primary purpose and governing instruments that are not uniform with one another.