

To: ALA Department and National Leadership
From: ALA National Secretary/Executive Director Dubbie Buckler
Date: 7/31/15
Re: Recent VFW Auxiliary name and membership changes – ALA is legally different; cannot adopt similar change to allow male spouses and relatives

The VFW, at its recent national convention, adopted an amendment to its bylaws changing the name of Ladies Auxiliary VFW to VFW Auxiliary and to allow male spouses and eligible male relatives to join the VFW Auxiliary. Many ALA members are also members of the VFW Auxiliary and are asking how or if this VFW change might affect the Legion's and ALA's membership eligibility criteria. It doesn't, and it can't. And here's why.

The Ladies Auxiliary VFW and Men's Auxiliary VFW have always been **programs** of the VFW, similar to how the Sons of The American Legion and Legion Riders are programs of The American Legion. The VFW Auxiliary is not a separate corporation from the VFW – it is program of and within the VFW, governed by the VFW, and it falls under the VFW's IRS identification and classification.

The VFW Auxiliary and American Legion Auxiliary are legally structured entirely differently. The American Legion Auxiliary is a separate corporation, incorporated as an all-female organization with our own Tax Identification and our own IRS Group Exemption independent from The American Legion. As such, we cannot amend our American Legion Auxiliary bylaws to change membership eligibility because our Articles of Incorporation filed with the government already prohibits it. The American Legion's federal charter established by Congress establishes membership eligibility in The American Legion. The American Legion Auxiliary is both incorporated and constituted as an all-female organization and our national governing documents cannot conflict with The American Legion's governing documents. The American Legion National Constitution Article 13, Section 2 specifically limits membership in the American Legion Auxiliary to females, as specified consistently in everything published stating membership eligibility criteria. Therefore, any changes to membership eligibility in The American Legion Auxiliary would first require a Constitutional Amendment to both the Legion and ALA Constitutions **and** an amendment by the federal government to the IRS Code, which is considered very unlikely.

If the American Legion Auxiliary were to become structured similarly as is the VFW Auxiliary, the ALA would become a program of and governed by The American Legion. The Legion would control our membership, our assets, our finances, our programs, and policies. That has never been the case, and I do not sense that after 95 years the American Legion Auxiliary would want to cease to exist as a separate corporation and become a program of and be controlled by The American Legion. If such were to happen at the National level, then likewise, ALA Auxiliary departments would become controlled by the Legion departments and posts would control units.

While there has long been an understandable desire to find a way to include into the Legion Family those connected to the Legion Family who are not otherwise eligible for membership, e.g. the wives of the Sons and male spouses of Legionnaires, there is literally no legal way to do so without Congress passing federal legislation re-defining eligibility.

Both The American Legion and American Legion Auxiliary at the national levels have together spent considerable time in recent years looking into the legalities of expanding membership eligibility, and continue to do so. Under the current federal law and Legion federal charter, ALA national articles of incorporation, and IRS regulations, there is no way legally possible to expand membership eligibility within The American Legion and American Legion Auxiliary without an Act of Congress, and that is unlikely in the foreseeable future.

The issue of expanding membership eligibility is compounded by the non-appealable audit and revocation authority exercised by the IRS. The current problem being confronted by The American Legion at the federal level is the fact that the IRS is attempting to impose the 75%

veteran membership requirement of Section 501 (c)(19) of the U.S. Tax Code on the American Legion Auxiliary. The Legion is now approaching Congress to get this matter resolved because the IRS is applying the rule to Sons of The American Legion. Since the SAL is a program of the American Legion, the SAL **is** the 25% “social membership” allowed under the 75-25 membership ratio enacted by Congress; the SAL **is not** unto itself an entity that must have 75% veterans as members.

The new IRS regulations also state that membership eligibility in the ALA and SAL is limited to two degrees of sanguinity, which means that great-granddaughters and great-grandsons are now not being deemed eligible by the IRS for membership in the ALA or Sons respectively, and units and posts are receiving negative IRS audits jeopardizing their exempt status for having such members. These relatively new IRS field audit regulations are entirely **contrary** to federal law. The Legion is taking every action legally possible at the federal level to get the matter corrected, which takes time and resources.

These problems with recent years’ IRS regulatory actions negatively impacting the ALA is at the center of the many presentations that ALA National Headquarters has made about IRS tax issues as it pertains to ALA membership and exempt status. As we have discussed frequently in national meetings the past 4 years, the IRS has long classified the ALA as a 501 (c)(19) tax exempt auxiliary veterans service organization, to which contributions are **fully tax deductible**.

Four years ago, the IRS revoked the tax exempt status of several hundred ALA entities. The IRS up until recently had been re-instating many of those ALA entities that re-applied for exempt status under the Section 501(c)(3) of the Internal Revenue Code – a 501(c)(3) is a social welfare organization. Now, the IRS has recently begun reinstating ALA entities that re-applied for exempt status under the Section 501(c)(4) of the Internal Revenue Code – a 501(c)(4) is a social welfare lobbying organization, a classification to which members’ dues and donor contributions are **not tax deductible**.

Therefore, because of a) the membership eligibility restrictions grounded in the federal charter Congress enacted for The American Legion, b) the ALA’s Articles of Incorporation and Legion’s Constitution specifying and limiting the ALA as an all-female organization, and c) the recent IRS regulations jeopardizing the tax exempt status of the American Legion Auxiliary, the membership eligibility in the Legion and ALA cannot be expanded or altered without an Act of Congress.

And expanding membership eligibility will not happen in the foreseeable future because the first internal legislative priority of the Legion is to ask Congress to protect current ALA and SAL membership eligibility, specifically to a) reverse the new IRS regulations that require the Sons to be comprised of 75% veterans, and b) overrule the new IRS regulations that limit membership eligibility to two degrees of sanguinity, protecting the membership eligibility of great-granddaughters and great-grandsons in the ALA or Sons respectively. The Legion is also continuing to work with Congress to promote a federal charter for the ALA in order to protect our 501(c)(19) IRS tax exempt classification. In the meantime, the ALA will continue to accept great-granddaughters into membership, and the SAL will continue to accept great-grandsons.

As has been mentioned, presented, and discussed in several ALA national meetings, the ALA cannot change its membership eligibility, and I greatly appreciate that the departments have understood and not presented new resolutions requesting changes to membership eligibility. For the reasons explained above, the Legion cannot consider any changes to membership eligibility.

I hope this explanation is helpful, and thank you for understanding why ALA membership eligibility cannot be amended or expanded.