

# Elks Grand Lodge Government Relations Seminar

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# Disclaimer

- This presentation is not intended to be specific legal or tax advice. It is intended to acquaint you with the procedures likely to occur in an IRS Audit of ELK's Lodges. The information is condensed to make it more understandable and to assist you in identifying issues. Details of the law are not being presented and the application of these laws cannot be based upon the information received in this seminar. Specifics of each case may be different and may cause special differences in the application of the law. You should consult with a qualified Tax Representative or Attorney about any issues that you think might apply to you.

# An old Friend wants to Visit



# IRS AUDITS

- Why is the IRS Auditing Lodges after decades of Silence?

To close The Tax Gap (between actual income and reported income)

The Government needs more **MONEY**

Needs to Locate Abusive Uses of Exempt Organizations

Needs to Locate Individuals who are not reporting payments

Teach Exempt Organizations how to Comply with an Incentive to pay attention.

Needs to Train More Exempt Organization Examiners

# Good News

- People and Organizations change very slowly
- Exempt Org Examiners in the IRS have always been the nice guys of the IRS – They will not change
- Don't let that fool you  
They will help you obey the law

However,

They understand the issues with untrained volunteers in the organization and the problems that causes

They will work with you to the extent allowed by law unless you don't try to work with them.

They abate more penalties than any other IRS organization, and they bring in less money.

**WORK WITH THEM**

# WHY ELKS?

- **Elks are Good Targets**

Elk Members are Normally members of other Civic organizations

Elks are also Civic Leaders

If the IRS examines One Lodge, the Members start cleaning up other civic Organizations they participate in

Elks are trained to do it the way they have always done it – not always the right way

Elks are Easy to Audit, because of the Grand Lodge standard procedures and therefore are a good training tool for new examiners  
Lodges usually have a little of all items they want to train Examiners on

# How will you find out

- Normally a Letter to the Lodge
- Very Rarely – a call to the Lodge
- Extremely Rare- by Two Agents who Have badges and guns – Special Agents  
If they show up, call your attorney, not the accountant.



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
TE/GE  
3730 Elizabeth Avenue  
Independence, MO 64151

July 21, 2009

Taxpayer Identification Number:  
[REDACTED]

Form:

990

Tax Year(s) Ended:

March 31, 2008

Date and Time of Appointment:

August 17, 2009 at 9 AM

Place of Appointment:  
[REDACTED]

Person to Contact/ID Number:  
[REDACTED]

Contact Numbers:

Telephone: [REDACTED]

Fax: [REDACTED]

[REDACTED]

Dear Sirs :

We plan to conduct an examination for the above periods on the date, time, and location indicated above. If the date, time and /or place needs to be changed, please call the person to contact as soon as possible in order to make those changes.

While I am setting up this examination, Agent [REDACTED] will actually be performing the examination.

We realize some organizations may be concerned about an examination of their returns. We hope we can relieve any concerns you may have by briefly explaining why we examine exempt organization returns and what your appeal rights are if you do not agree with the results.

We examine returns to verify the correctness of income or gross receipts, deductions and credits, and to determine that the organization is operating in the manner stated and for the purpose set forth in its application for recognition of exemption. In many cases, we close examinations without changes.

When we complete the examination, we will explain our recommendations and how they may affect your exempt status or tax liability, such as employment, excise or unrelated business income taxes. You should fully understand any recommended changes and their ramifications. Please do not hesitate to ask questions about

anything that is not clear to you.

If we recommend changes involving your tax liability and you agree with the changes, we will ask you to sign an agreement form. By signing the form, you will indicate your agreement to the amount shown as a refund due or additional tax owed.

You do not have to agree with our recommendations. You may request a conference at a higher level as explained in the copy of the appeal procedures that we will provide you.

If you do not wish to have someone present through the examination, we would appreciate having an officer or representative available at the beginning of the examination to discuss the operations of the organization and again at the end of the examination to discuss the results.

If we conduct our examination with your representative, you must file a Power of Attorney in order for your representative to receive or inspect confidential information. You may use Form 2848, *Power of Attorney and Declaration of Representative* (or any other properly written power of attorney or authorization), for this purpose.

To help make the examination as brief as possible, please have the records listed on the attached Information Document Request (IDR) available for the year(s) under examination.

If you have any questions, please call me at [REDACTED]. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

[REDACTED]  
[REDACTED]  
Internal Revenue Agent

Enclosures:  
Publication 1  
Information Document Request



# GULP! You got the Letter

- What do You do NOW?
- First – Notify Grande Lodge of the Audit
- Ask for an “IRS Packet” to be sent to you, You will have to prove you are a “C (8) instead of a C (10) This packet does it.
- Look at the IRS information request to see what they are Looking for

Form 4564  
(Rev.  
June 1988)

Department of the Treasury - Internal Revenue Service

# Information Document Request

Request  
Number  
1

To: (Name of Taxpayer and Company Division or Branch)

Subject  
200803 Examination

SAIN Number to:

Dates of Request

Please return Part 2 with listed documents to requester identified below.

## Description of Documents Requested

The following information is being requested for the examination of the organization's Form 990, Return of Organization Exempt From Income Tax, for the year ended March 31, 2008. The information requested will be used to verify the accuracy of the Form 990 and to determine:

- a. Whether the organization continues to qualify under §501(c)(8) of the Internal Revenue Code;
- b. Whether the organization has income subject to the tax on unrelated business income under § 511 of the Internal Revenue Code; and
- c. Whether the organization has filed all required information and tax returns.

Please have the following documents available for review on August 17<sup>th</sup>, 2009. Copies of the following items do NOT need to be made:

- (a) Organizational documents (Articles of incorporation, etc) including any amendments.
- (b) Bylaws, including any amendments
- (c) Minutes of Meetings for 2007 and 2008
- (d) The Chart of Accounts.
- (e) The accounting worksheet used that connects the books and records to the Form 990 return.
- (f) Summary of the General Ledger listing accounts and total amounts spent.
- (g) A copy of the amended Form 990 for the year ended March 31, 2008 if it was amended.
- (h) Employment Contracts, and Lease Contracts.
- (i) Other contracts that obligate the organization to perform, or receive, services.
- (j) W-2s, W-3s, W-4s, and W-2Gs issued in 2007 and 2008.
- (k) W-9s, 1096s and 1099s issued in 2007 and 2008.
- (l) Form 940s, and 941s issued for the last three quarters of 2007 and first quarter of 2008.
- (m) Bank Statements, and returned checks, for all bank accounts from March, 2007 through April 2008.
- (n) Receipts, vouchers and other substantiation of expenses for the year ended March 31, 2008
- (o) An explanation of the rental income of \$44,751 including, but not limited to, the activity or activities that generated that rental income and the expenses related to the generation of that income.
- (p) An explanation for the special events that grossed \$59,701 including, but not limited to, the activity or activities that generated that income and the expenses related to the generation of that income.

Information Due By	August 17, 2009	At Next Appointment	<input checked="" type="checkbox"/> Mail In	<input type="checkbox"/>
From:	[Redacted]	Date	July 21, 2009	
	Elizabeth Avenue Independence, MO 64057	Telephone Number	816-503-4271	

# Organize for the Audit

- Buy 3 Bankers Boxes and 30 Hanging Folders
- Label a hanging folder for each item on the Information Request
- Put the required Documents in the labeled folder
- Check off the item on the list when complete

# Call your Accountant

- Engage your accountant to represent you
- Sign a Power of Attorney for the Representative for the year before, the audit year, and the year following
- Have the Representative Call the IRS to Schedule the Audit if a date is not set
- Schedule a Walk-through with the POA so they can see every room, closet, storage area, and outside area
- Look for things which will draw attention of the Examiner. Gambling Items draw attention

# The Actual Audit

- Normally takes 1 to 2 days
- Normally held at the Lodge, but can be elsewhere, like the accountant's office
- Begins with an interview
  - Questions about what the lodge activities are:
    - Is it A FRATERNAL organization and does it provide Member Insurance Benefits – **Yes, see Grand Lodge Packet**
    - Does the Lodge have Ceremonies – **Yes, Installation of Officers and members**
    - What Services does the Lodge Perform?
      - Scholarships via State Assn and ENF**
      - Member retirement home**
      - Veterans Recognition**
      - Drug Abuse Programs**
      - Youth and Family Programs**
      - Social Activities**

# TRAPS In the Interview

- Do you have more than one class of members?
- Do you give scholarships directly to individuals?
- Do you pay officers or trustees?
- Does any officer or Trustee perform work under contract with the Lodge?
- Are Non-Members allowed in the Lodge?
- Do you have a sign in book?

# NON-MEMBER PARTICIPATION

- Guest are persons accompanied by a member – all charges paid by the member for guest – No Problem at All
- Non-Members who pay their own cost for Food, Drinks, Games, Etc are always a potential Problem
  - Non-member sales/receipts must be accounted for separately from members payments
  - Non-member sales/receipts May be Taxable Unrelated Business Income (UBIT).
  - Non-member Gambling proceeds May trigger Unexpected License & Tax Issues and UBIT and exemption Questions
  - Non-Member Alcohol Service may violate State laws and is taxable as UBIT

# The reason you engage an accountant

- This interview and lodge walk through are evidence gathering techniques. You do not know why they ask these questions, the accountant does. These questions guide the agents in where to spend their time during the Audit.
- The wrong answer can cost a lot.



# Evidence Checking in an AUDIT

- Comparing the 990 to financial statements
  - Compare Bank Reconciliation to Ck Register and Bank Statement
  - Compare Financial Stmt to 990 tax return
  - Trace a sample of income to Bank deposit
  - Trace a sample of Expenses to actual Checks
  - Compare total deposit to total reported gross income
  - Identify Income Accounts which might be UBIT
    - Check to See if Non-Member Income is present
    - Determine if activity is Regularly Carried on, If so, Check 990T for reported UBIT
    - Examine UBIT Expense to see if they are directly connected to UBIT item
- Find Unreported Income To Individuals
  - Select accounts which are likely to show Service Payment  
Repairs, catering, janitorial, etc
  - Look for payment to Individuals and non-Corps businesses
  - Scan Vendor Payment summary if computerized
  - Compare 1099s to service payment totals
- If No 1099 issued or incorrect amount - Mark for Adjustment
- Their Position is that if you did not report the payments on a 1099 and the individual did not report it on their tax return, then the lodge should pay 28% in backup withholding plus interest

# Payroll Tax Compliance

- Compare Salaries expense Total to W-2 Total
- Compare 4 quarters 941 report wages and tax payments to W-2 totals and Expense amounts
- Compare 940 to Payroll report and State unemployment reports.
- Look for expense reimbursements which are not backed up by receipts
- Any differences are marked for adjustment.
- Compare Officer List to W-2 for excessive Compensation
- Compare Officer list to Vendor list for preferential contracts.

# UBIT REPORTING

- 990 T – Annual tax form for Unrelated Business Income
  - Unrelated means not substantially related to the Exempt Purpose
  - Must be Regularly Carried On
    - Frequency and Continuity to similar commercial business
      - Exceptions: Certain Bingo Games, Volunteer labor exception, others

# UBIT Activities

- Lodge UBIT activities
  - Rent of Facility if services rendered
  - Non-member Bar Sales
  - Non-Member Kitchen Sales
  - Newsletter ads
  - Pull Tab Bingo
  - Gaming or Wagering
  - Raffles or fundraising activities
  - Special events if regularly carried on

# Renting The Lodge- UBIT

- Rent collected for use of the Facility with no Services rendered is excluded from tax normally
- Rent to non members is UBIT if any services are rendered unless that service is normal for rentals
- Bar services, catering, life guards, security, Entertainment are all personal services which will cause the rent payment to become UBIT
- Separate contracts should be issued for services and not be combined with the facility rental
- Cash Bars even if a member rents the facility are UBIT when a non-member pays for their own drinks

# Examine for Wagering

- Wagering on:
  - Sports events or contests, for example, football pools if wagers accepted by employees
  - Bets on sports events or contests not in a pool if for profit
  - Lotteries conducted for profit
    - Raffles, scratch offs, pull tabs, PIG Jars

NOT WAGERING IF ALL PROCEEDS ARE USED FOR CHARITY

Proceeds may not be put in the general fund because funds then inure to the benefit of any individual members

# Federal Wagering Tax

- Tax on any person or organization in the business of accepting wagers
- Tax is higher if the wagers are not legal under state law
- Tax is .25% of gross wagers and a fixed fee of \$50 for each employee who accept wagers
- Tax increases to 2% of Gross and \$500 per employee if wager is not legal
- Form 730 due by July 1 each year

# Members vs. Non-members

- This is a key issue in any Audit



# How do you tell who is member?

- Can a Lodge have More than one class of members?
  - IRS Rules Allow it, But it can cause Inure Problems
  - If a lodge has multiple classes, then each class needs to pay dues according to the benefits received.
  - WHY?
  - If a class of members pays less dues/fees for the same services than other classes of members, then the IRS deems that the lower paying members have received benefits. Private inurement is a reason to deny or revoke exemption.

# Examples

- Spouses of Elk Members?
- Visiting Elks?
- Individual agents have proposed that these are not Members But are Non-members. Income from them is UBIT
- Their reasoning: Members pay dues, are installed as members in a ceremony and Neither of these pay dues, or were installed in the lodge.

# Associate Members

- Associates pay dues and can be approved as members in an installation ceremony, but normally have fewer rights than a member
- Dues must be commensurate with received Exempt benefits of the association
- Elk Spouses could be associate members without voting rights or meeting rights, but could participate in the social and fraternal functions of the lodge. i.e. Bar rights, kitchen rights, game room rights, etc
- If the associate membership is solely for UBIT services, then the dues also become UBIT - Example: Assoc Mem. who only Purchases Insurance and the dues equal the insurance premium.
- IF RIGHTS ARE SOCIAL Exempt function rights and they pay commensurate dues, then the Associate members DUES are exempt and SALES are not UBIT
- Sales should be recorded as exempt sales would be.
- Warning, if these associate members do not receive the newsletter, then a part of the dues of members can be allocated to Newsletter income and affect UBIT

# What is a non-member?

- Persons who are not Members or Associate-Members
- Income must be recorded separately from Member income unless paid for by a member
- Non-Member income is normally taxable whether part of an exempt function or a non-exempt function i.e. Kitchen or Bar
- Non-member income is not taxable if specifically excluded by law
  - Bingo
  - Charitable raffles
  - Voluntary Labor exception
  - Donated articles exception

# Charitable Issues

- Charitable Deduction for the Lodge
  - Must be substantiated – letter from charity showing 501(c)(3) status and amount of donation
  - Lodges are not Charities
  - Many Agents don't check this
- Charitable Use of Facilities
  - Get 501 (c) (3) determination Letter Before first use
  - Small organizations frequently say they are charities but have never actually applied for determination or file a 990 with the IRS
  - If you let the organization use the lodge facility for Fundraising events, and the people they bring in are not members of the lodge, then the Lodge may be declared a Place of Public Accommodation and the Lodge could lose its Exemption.
  - Example: Charity get free use of the lodge to hold Halloween Fun House, Charity turns out not to have ever filed for determination, Holds not valid state charter, has never filed a 990. This is a problem for the Lodge even though the Lodge thought it was a valid charity.

# The End of the Audit

- At the close of the Audit, the examiner will review the items that they expect you to prepare and send to them.
- If they need additional information later they will ask you by mail or phone for it.
- Be On Time with this information

# Payments

- If you owe money they will ask if you can pay it now. If you can pay it, do so. They are more inclined to forgive penalties if you do.
- They cannot forgive interest

# Confusion

- If you do not understand anything about what they are asking you to do, Ask Now
- They will take the time to explain it to you.
- If you do not understand, you will do it wrong and they will have to fix it.



# Exempt Organization Audits

- Remember, They are the Nice IRS Guys
  - They don't want to put you in jail
  - They understand volunteerism
  - They will work with you
- 
- They don't use confrontation unless you use it.
  - Don't try to intimidate them with your lawyer, They will assume you have much to hide and look very hard to find it.

Questions?