

4-H Chartering & IRS Basics

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4-H Tax Exemption
Key Points from 2008-2009 4-H Tax Exemption Listserv Messages & PWG Notes
February 25, 2009 PWG Call (updated 3/2/09)

To comply with new IRS electronic filing requirements for small tax exempt organizations, per the Pension Protection Act of 2006, and as the “parent organization” for the 4-H Group Exemption Number (GEN) 2704, 4-H National Headquarters provided fact sheets, training, and instructions for State 4-H Program Offices to use to update GEN 2704 records and have their eligible, qualified 4-H subsidiaries comply with new IRS filing requirements in the fall, 2007. New filing requirements for small tax exempt organizations kicked in January 2008.

Message for State 4-H Leaders:

- GEN 2704 has been under review for some time, during which a number of processes are on “hold,” while others are on “go.”
- The IRS is working on a position paper as 4-H National Headquarters seeks further clarification and support directly from the IRS.
- In the meantime, updates to GEN 2704 are not taking place.
- In the meantime, all eligible, qualified 4-H subsidiaries Must file the appropriate tax form on time, or face the consequences.
- 990-N filing will fail for Many eligible, qualified 4-H subsidiaries. Reasons include the organization is not on file with the IRS under GEN 2704, errors in their EIN record, and that the tax year on file may be unknown or unclear to the 4-H subsidiary. For eligible/qualified subsidiaries: *“It is better to try & fail, than to fail to file IRS tax forms.”*
- Whether successful or not in filing a 990-N, 4-H subsidiaries need to save evidence of success or failure.
- Once an organization files their 990-N, as a tax exempt organization, some information is public and searchable on the web.
- State 4-H Program/Extension Offices need to continue tracking their own subsidiaries.
- IRS scripts regarding many 4-H calls continue to direct callers back to their State 4-H Office. *However*, if an organization failed to properly file their tax forms and needs assistance, they should be seeking help.
- 4-H National Headquarters does not provide professional tax advice.
- 4-H National Headquarters anticipates forwarding interim guidance in the spring.

List of relevant guidance and key points:

<p>2008, July 23 (Listsrv msg)</p>	<ul style="list-style-type: none"> • Chartered 4-H clubs & duly authorized eligible & qualified 4-H affiliated organizations need to call their State 4-H Office with tax exemption questions, not 4-H National Headquarters or the IRS [regarding inclusion under GEN 2704]. • The “Kirby” letter & 1993 tax exempt guidance ceased to be current guidance when new guidance & GEN 2704 procedures and filing requirements were communicated in 2007. • The IRS encountered delays in processing national GEN 2704 updates due to the level of error in the EIN records, following a 3-month data cleaning period, and questions about inclusion of some “affiliated organizations.” [The IRS has not completed data entry given issues with GEN 2704 overall; GEN 2704 modifications are <u>not</u> taking place.] • 4-H requested from the IRS clarification of the tax exempt status of 4-H given the last ruling dates back to the 1970s & was based on a ruling from the 1940s that referenced 1930s tax code, much of which is no longer in current law or regulations. (No longer in effect – an initial “extension” regarding 990-N filers during 2008.)
<p>2008, Oct. 2 (Listsrv msg)</p>	<ul style="list-style-type: none"> • In response to calls from State 4-H Program Leaders about 4-H subsidiaries receiving IRS penalty notices, 4-H National Headquarters forwarded instructions from the IRS regarding how GEN 2704 subsidiaries—typically earning \$25,000 or less—need to respond to 2 types of penalty notices. • The 990-N is not the time/place to update EIN record data [this includes the tax year that the IRS has listed for each organization]

<p>2008, Oct. 7 (Listserv msg)</p>	<ul style="list-style-type: none"> • GEN 2704 tax exemption issues review (process, organizations that are eligible, etc.). • The IRS continues to hold off on updating GEN 2704 EIN records given the data quality & GEN 2704 status issues; no plans to collect EIN data in December. • Procedures & conditions under which 4-H National Headquarters will respond to a State 4-H Program Leader's request for an "emergency letter."
<p>2008, Oct. (PWG notes)</p>	<ul style="list-style-type: none"> • Note 10/2/08 and 10/7/08 listserv messages
<p>2008, Nov. (PWG notes)</p>	<ul style="list-style-type: none"> • The "extension" for eligible, qualified 4-H subsidiaries earning \$25,000 or less <i>not being penalized for not filing a 990-N during 2008 is not extended into 2009</i> – even though some organizations will not be successful in filling a 990-N. • ALL eligible and qualified 4-H subsidiaries must file the appropriate tax form on time or face the consequences (this is not a change for groups typically earning more than \$25,000 – they've always needed to file the appropriate form). • 4-H National Headquarters provides general guidance regarding GEN 2704 for state-level communications, but does not provide professional tax advice and is not authorized to view 4-H subsidiaries' tax forms. State 4-H Program Leaders, if they haven't already, may wish to engage their universities' business office for assistance or direct your 4-H subsidiaries to seek professional tax advice. • Many 4-H subsidiaries will <u>not</u> be successful in filing a 990-N. Reasons include their organization is not listed in the IRS' GEN 2704 file.
<p>2008, Dec. 11 (Listserv msg)</p>	<ul style="list-style-type: none"> • Repeats required filing message, IRS requirement that 4-H subsidiaries save evidence of success or failure to file a 990-N, and the role of 4-H National Headquarters • Reviews "qualified entities" for IRS filing
<p>2008, Dec. (PWG notes)</p>	<ul style="list-style-type: none"> • Request to carefully review 12/11/08 listserv message. • State 4-H Program Leaders may visit www.irs.gov to access the 990-N and "support" which provides FAQs and a Quick Start Guide – to better respond to questions within your state. • When 990-Ns fail, calling the IRS number will result in caller being told to contact their State 4-H Office [Some may be told the parent organization hasn't added them to GEN 2704]. • State 4-H Program Leaders asked to assure their subsidiaries that the IRS and 4-H National Headquarters are working to resolve issues with 4-H tax exemption. • 4-H National Headquarters asked the IRS for a position paper on all tax issues; this is in draft form. No more trials and tests; we'll share information when it's ready. We do know that not-for-profit law does not apply to 4-H.
<p>2009, Feb. 10 (Listserv msg)</p>	<ul style="list-style-type: none"> • We need your help in working on these issues "locally" • SSNs are required on SS-4 forms (online or paper); IRS discards the SSN upon assigning the EIN • 4-H National Headquarters is no longer collecting/tracking EIN data [Nor are data being forwarded to the IRS related to "emergency" letter requests] • Use existing PWG/listserv messages to address IRS penalty issues and to guide eligible, qualified 4-H subsidiaries to file the appropriate tax forms on time, and to follow "emergency" letter requests (allowable circumstances & procedures) • State 4-H Program Office need to continue tracking their EIN records/requests/ changes to their 4-H subsidiaries' EIN records
<p>2009, Feb. 25 (PWG notes)</p>	<ul style="list-style-type: none"> • Will GEN 2704 go away? It hasn't been decided but is being decided; probably. Know the IRS is being very supportive, these are complex issues, and our Office of General Counsel has been absorbed with the Farm Bill... We continue in this holding pattern, as the IRS remains very supportive. • 4-H tax exemption options, <u>for tax purposes only</u>, may include having clubs fall under LGUs; having state or regional/county level 501(c)3s that are parent organizations, or for each club to be a 501(c)3 – the latter being quite unlikely. Clarification regarding options & guidance for change are forthcoming. We <i>anticipate</i> having official IRS communications by mid-summer. We anticipate a transition process & guidance for implementing change. Training ahead. • Glenn's advice: Consult with your Extension Directors, LGU tax attorneys, auditors & business officers. Attorneys advise that county associations are 501(c)3s that handle funds for clubs in their counties; the association would file the 990s. Attorneys say - <u>get outside tax advice</u>. Each LGU will have to determine what will work best for them within the options provided. • 4-H chartering operates independently of tax exemption structures.

Excerpts from 10/2/08 Listserv Message regarding Penalty Notices for eligible, qualified 4-H subsidiaries typically earning \$25,000 or less:

INSTRUCTIONS: Please share the following instructions for chartered 4-H clubs and duly authorized affiliated 4-H organizations under the control of Cooperative Extension whose annual gross receipts are \$25,000 or less. The following steps will prevent additional penalty notices, and subsequent collection activities, from being generated and mailed to your clubs. Instructions vary depending on the type of notice being received:

- (1) Request for Form 990 or for 990-EZ from the IRS Ogden Campus:
 - Reply in writing to the IRS by marking the box that states that "The organization will file a Form 990-N by the response due date shown above, because its annual gross receipts were normally \$25,000 or less and it is not a section 509(a)3 organization."
 - File a Form 990-N immediately. Form 990-N is filed electronically by accessing www.irs.gov and navigating to "Charities & Nonprofits" and then to the following subject link: Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard)
 - **NOTE:** The 990-N is *not* the place to correct or update data about the EIN record, including the organization's tax year.
 - (2) Notice reading: Please Call Us [IRS]About Your Overdue Taxes or Tax Returns from the Operations Manager, Automatic Collection System:
 - Reply in writing to the IRS address by stating that "This organization is listed with the IRS as a tax-exempt subordinate under a group exemption issued to the 4-H Clubs and Affiliated Organizations. The organization will file a Form 990-N by the response due date shown above, because its annual gross receipts were normally \$25,000 or less and it is not a section 509(a)(3) organization."
 - File a Form 990-N immediately. Form 990-N is filed electronically by accessing www.irs.gov and navigating to "Charities & Nonprofits" and then to the following subject link: Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard)
 - **NOTE:** The 990-N is *not* the place to correct or update data about the EIN record, including the organization's tax year.
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Excerpts from 10/7/08 Listserv Message including review of "eligible/qualified" 4-H subsidiaries and "emergency letter" procedures:

Some highlights in review:

- 4-H organizations that are eligible for federal income tax exemption under GEN 2704 are chartered 4-H clubs and duly authorized affiliated 4-H organizations—under the control of Cooperative Extension.
 - This does not include affiliated groups that function under the authority of their own board of directors or other authorities, nor families—as the IRS does not recognize a single family group as a qualified subsidiary of GEN 2704.
 - Affiliated groups not under the control of Cooperative Extension need their own 501(c)3 status.
- State 4-H Program Leaders submitted EIN records for 4-H organizations deemed eligible for inclusion under GEN 2704, and Extension Directors signed letters certifying that all organizations listed were duly authorized and under the control of Cooperative Extension—unless marked for removal.
- Following data cleaning efforts, such as removing records where multiple organizations were using the same EIN, we submitted a national data set to the IRS in March for them to update the GEN 2704 list. Entities being added to GEN 2704 will become tax exempt when the IRS updates each record.

UPDATES:

As indicated in the tax exemption update posted on the web, the IRS encountered delays in processing the GEN 2704 list. The IRS is dealing with the volume of data as well as the frequency of error in the data—such as EINs that belonged to other organizations and EINs that didn't match the IRS' records for organizations listed.

As a result, the IRS put a hold on updating GEN 2704 records and began a series of discussions and negotiations with National 4-H Headquarters. We continue to work to identify more efficient and effective procedures for managing tax exemption for qualified 4-H entities that fit with current tax code. We **do not** have plans to collect additional EIN records in December as originally planned. And, we will follow up when we have information about how 4-H clubs and qualified, affiliated 4-H organizations can update existing IRS records, including tax years.

TAX EXEMPTION LETTERS:

National 4-H Headquarters, USDA will generate "emergency letters" upon request to chartered 4-H clubs and duly authorized affiliated 4-H organizations under the control of cooperative extension up through June 1, 2009. "Emergency letters" are for clubs that cannot accept funds or grants without some evidence of tax exempt status to share with a funder. [2.25.09 addendum: requesting a tax letter for a subsidiary to file with tax forms is not an allowable request.] To request such a letter, we need an electronic "paper trail" as follows:

- The State 4-H Program Leader (not a designee) submits the request to us at 4-H_tax_info@csrees.usda.gov with an EXCEL attachment containing the usual information, with at least required fields A-K as you've been doing all along.
- In the body of the request, indicate (1) the organization listed is duly authorized to use the 4-H Name & Emblem, (2) is under the control of Cooperative Extension, and (3) whether the record was submitted previously to National 4-H Headquarters or is totally new to us.

Be advised that county 4-H programs [read offices and land-grant university funded programs] are part of the land grant university, and usually operate under the tax status of the university and are not eligible for inclusion under the existing GEN 2704. Allow approximately 2 weeks for National 4-H Headquarters to respond to emergency letter requests. Letters are mailed to the 4-H organization contact and copied to the State 4-H Program Leader and the Extension Director.

Excerpts from 12/11/08 Listserv Message regarding Required Filing:

Qualifying Entities for inclusion under GEN 2704 are those 4-H entities that are:

- duly authorized 4-H clubs and affiliated 4-H organizations that are
- under the control of Cooperative Extension that
- earn income or accept donations (the latter -- for which donors want charitable giving deductions)
- excluding Army and Air Force clubs (because they do not handle money nor have bank accounts), and may include
- those entities not earning income but for which a State 4-H Program Office has required an EIN and inclusion under GEN 2704.

Qualifying Entities Typically Earning \$25,000 or Less File the 990-N E-Postcard

- Beginning in 2008, small tax exempt organizations needed to begin to annually file the 990-N or E-Postcard. This includes GEN 2704 subsidiaries.
- Previously communicated information regarding these organizations not being penalized for not filing the 990-N during 2008 does not extend into 2009.
- ALL eligible and qualifying organizations, which have been operating for at least one year, MUST file the 990-N on time (by the 15th day of the 15th month following the end of their tax period).
- Some organizations will not be successful in filing a 990-N in the near future. Reasons include that the organization is eligible for inclusion under GEN 2704, but their record is not listed under GEN 2704 with the IRS at this time.
- All organizations must keep documentation from the IRS in their files -- including confirmation of successful filing and documentation of unsuccessful attempts to file the 990-N.
- Note, this is not the time and place to change information about the organization, such as tax year.
- The old adage applies here, "It is better to try and fail rather than to never have tried at all."
- Instructions, forwarded on 10/2/07, for qualified entities in this income category that received IRS penalty notices for not filing in 2008 remain in effect.

Qualifying Entities Typically Earning More Than \$25,000 File the 990 or 990-EZ

- There is NO CHANGE regarding the need for organizations in this income category regarding tax filing. These organizations have always needed to and must continue filing their taxes on time.
- Qualified organizations should list GEN 2704 on their tax forms, and indicate their tax exemption status as a 501(c)3 EVEN THOUGH GEN 2704 subsidiaries are not independent 501(c)3 organizations--this is the most appropriate box to check on the tax forms.
- National 4-H Headquarters, USDA cannot provide professional tax advice about filing tax forms nor alleviate penalties when 4-H subsidiaries do not follow instructions nor file properly.