

Memorandum

To: Department Commanders, Adjutants, and Quartermasters

From: Marc Garduno, Quartermaster General
John Muckelbauer, General Counsel

Date: August 14, 2024

Re: Corporate Transparency Act (CTA)

Many Posts and Departments have reached out regarding the impact of a new reporting requirement for certain businesses. In addition to the general information previously provided in the January 2024 National Headquarters Bulletin, additional clarification is provided below.

The Corporate Transparency Act (CTA), enacted as part of the Anti-Money Laundering Act of 2020, is designed to enhance transparency in corporate ownership by requiring certain entities to report information about their beneficial owners to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). With an effective date of January 1, 2024, the act requires certain companies to file reports on ownership information. The act primarily targets corporations, limited liability companies (LLCs), and other similar entities that may be used to conceal ownership and facilitate illegal activities such as money laundering or terrorism financing.¹

Applicability of the CTA to VFW Posts and Departments

VFW Posts and Departments, as tax-exempt organizations, are generally exempt from the reporting requirements of the CTA. The legislation focuses on entities where ownership could be hidden, which is typically not the case for nonprofits like VFW Posts and Departments.

Impact of Losing Tax-Exempt Status

The scenario changes if a VFW Post loses its tax-exempt status. This could happen if the Post fails to file the required IRS forms, such as Form 990, for three consecutive years, or if it

¹ The Constitutionality of the CTA is being litigated. A recent decision by a federal district court determined it was unconstitutional and stopped its enforcement against the plaintiff, the National Small Business Association (NSBA). Until the matter is decided by the courts, all other covered businesses have to comply.

engages in activities that do not align with its nonprofit mission.

- Reclassification as a For-Profit Entity: If a VFW Post loses its tax-exempt status, it might be reclassified as a for-profit entity. In this case, the Post could fall under the CTA's reporting requirements, especially if it is organized as a corporation or LLC.

- Beneficial Ownership Reporting: As a for-profit entity, the Post would likely need to report its beneficial owners to FinCEN, in compliance with the CTA, to avoid legal penalties.

Obligations Regarding Form 990 and Fraud Reporting

Regardless of tax-exempt status, all VFW Posts and Departments are required to file Form 990 annually with the IRS. This form is a key part of maintaining tax-exempt status and provides transparency regarding the organization's finances and operations.

- Fraud Reporting: On Form 990, VFW Posts and Departments are obligated to report any instances of fraud or misappropriation of assets. This includes any known or suspected fraud that has occurred within the organization. Failing to disclose such information can result in penalties and jeopardize the organization's tax-exempt status.

- Transparency and Accountability: Reporting fraud on Form 990 is essential to ensuring transparency and maintaining the trust of donors, members, and the public. It also helps the IRS monitor the integrity of nonprofit organizations.

Best Practices for VFW Posts and Departments

To ensure compliance with the CTA and IRS regulations, VFW Posts and Departments should:

- Maintain Tax-Exempt Status: File Form 990 on time and adhere to IRS regulations to avoid reclassification as a for-profit entity.

- Report Fraud Diligently: Disclose any incidents of fraud or financial irregularities on Form 990 to maintain transparency and accountability.

- Seek Legal Advice: Consult with legal counsel to stay informed about reporting obligations under the CTA and other relevant laws, particularly if tax-exempt status is in jeopardy.

Conclusion

While VFW Posts and Departments are generally exempt from the Corporate Transparency Act's reporting requirements due to their nonprofit status, losing tax-exempt status could trigger new obligations under the CTA. Additionally, all VFW entities must report any instances of fraud on their Form 990 to maintain compliance with IRS regulations. Maintaining transparency and accountability through proper reporting is crucial to the continued success and integrity of VFW Posts and Departments.