**AC-119 Gunship Assoc Bd-Only Teleconf Agenda** **Tues, 7 Jan 2020, 2000 EST** AC-119 Conf Call #1-951-797-1058 Code: 814468 (Host Code: 1796) Secy Andrea is Host Turn-On Voice Recorder! Press 5\*

1. **Call to Order /Roll Call: 2000 hours EDT.** Proposed Attendees: JHester, RDavis, ADryzgza, DWohlgamuth, MDryzga, JWolff, JDunn, JLaird, GSininger
2. **KEY ISSUES TO BE ADDRESSED *(SEE ATTACHED)* & Final board decisions. Do we:**
   1. Keep operating as we have in the past, without regard to IRS rules
   2. Determine if they are Independent Contractors
   3. Comply with IRS Reporting Requirements (W-9 to us; 1096/1099 to IRS; 1099 to individuals) by 31 Jan
   4. Avoid penalties for Late or Not Filing 1099s with IRS & providing them to individuals by 31 Jan
   5. Negotiate/Finalize work agreements (Contracts)
   6. Approve the current payment due Liz & proposed factors for future negotiations with both.
3. **PRESIDENT’S Note.** during our research, we’ve identified some other critical factors which could affect our ability to retain our tax-exempt status. We’ll be sending out some materials Board Members & others in Association Leadership positions should review so we can identify any additional changes we may need to make to keep us running well into the future.
4. **Single Issue – Payments to individuals for work performed Key Issues:**
   1. Keep operating as we have in the past, without regard to IRS rules
   2. Independent Contractor Determination
   3. IRS Reporting Requirements (W-9 to us; 1096/1099 to IRS; 1099 to individuals)
   4. Penalties for Late or Not Filing 1099s with IRS & providing them to individuals
   5. Work agreements (Contracts)
   6. Board approval of current payment due Liz & proposed factors for future negotiations (Liz – pay rate, estimated hours, & possible annual maximum payment; JP – fixed rate per year or per video, minimum/ maximum annual payments).
5. **Background.** We are currently paying two individuals for work performed for the Association (Liz & JP). Apparently, previous leadership assumed that if we called these payments “Honorariums” they would not be considered taxable for the individuals, & the Association would have no responsibility to report the payments to the IRS. *We don’t know if this assumption was shared with either individual or if it has ever been previously questioned.* *We recently discovered that ANY payments to individuals for work performed are taxable.* If anyone knows of any legal (IRS approved) way to make non-taxable payments to these individuals, please provide any pertinent info that would support this position ASAP.
6. **Employees vs Independent Contractors** The primary question then becomes whether the individuals are employees of the Association or independent contractors.*A general rule is that the exempt organization, as the payer, has the right to control or direct only the result of the work done by an independent contractor, & not the means & methods of accomplishing the result (*[*https://www.irs.gov/charities-non-profits/exempt-organizations-who-is-an-independent-contractor*](https://www.irs.gov/charities-non-profits/exempt-organizations-who-is-an-independent-contractor)*).*
7. **Common Law Rules** In determining whether the person providing service is an employee or an independent contractor, all info that provides evidence of the degree of control & independence must be considered, based on three common-law rules [*https://www.irs.gov/businesses/small-businesses-self-employed /independent-contractor-self-employed-or-employee*](https://www.irs.gov/businesses/small-businesses-self-employed%20/independent-contractor-self-employed-or-employee):
8. [Behavioral](https://www.irs.gov/businesses/small-businesses-self-employed/behavioral-control): Does the company control or have the right to control what the worker does & how the worker does his or her job?
9. [Financial](https://www.irs.gov/businesses/small-businesses-self-employed/financial-control): Are the business aspects of the worker’s job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc)
10. [Type of Relationship](https://www.irs.gov/businesses/small-businesses-self-employed/type-of-relationship): Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue & is the work performed a key aspect of the business?
11. **Recommended Determination.** Based on the info above, it appears both individuals should be considered as independent contractors, rather than as employees. *I also confirmed this through informal (& hypothetical) discussions with a few leaders from other non-profit organizations & some CPAs I know.* ***Caution****: An Exempt Organization can be held liable for employment taxes, plus interest & penalties, if a worker is incorrectly classified as an independent contractor.* **If anyone disagrees with this determination, please explain why & what you would propose doing about the payments we make to these individuals.**
12. **Reporting Independent Contractor Payments to the IRS.** Although all payments to independent contractors are taxable, payments totaling $600 or more annually must be reported to the IRS on a [*Form 1099-MISC, Miscellaneous Income*](https://www.irs.gov/pub/irs-pdf/f1099msc.pdf) (PDF), which must be transmitted with [*Form 1096, Annual Summary & Transmittal of U.S. Information Returns*](https://www.irs.gov/pub/irs-pdf/f1096.pdf) (PDF) (similar to a cover letter). In order to file these documents with the IRS, we need to have the individuals provide us with an IRS [*Form W-9 (PDF), Request for Taxpayer Identification Number & Certification*](https://www.irs.gov/pub/irs-pdf/fw9.pdf) to get their correct names, addresses, & SSNs/EINs.
13. **Penalties for Late Filing or Uncorrected Errors.** The IRS imposes penalties for each Form 1099 not filed with the IRS **OR** provided to the individuals on time *(basically multiply the penalty by 2 if the form is not provided to either)* or with uncorrected errors ranging from $50/form to $110/form, depending on how late they are filed/provided. The penalty is now the greater of **$550 per form** or 10% of the amount required to be reported on the return if a filer neglects to send forms altogether (to either the IRS or the contractor) when the filer knew it should have (what the IRS classifies as “Intentional Disregard”). This penalty has no maximum! *Although highly unlikely, Board members could potentially be held liable for actions taken on behalf of the Association.*
14. **Contracts.** Although not required, we should develop an agreement (contract) with each individual that identifies them as independent contractors, defines their responsibilities, & clearly states the payment arrangements. We’re looking for a good sample. Both would need to state that the work product is owned by the Association, not the individual.
15. **Optional Pay Rates.**
16. **Liz, Web Management.** Based on her workload for 18 Oct 2018-21 Dec 2019 (144 hours), the hourly rate she has agreed to accept ($40), & previous payments totaling $3,500, we currently owe her $2,260 for this time period. She & Wayne project that she will need 135 hours to support our workload this year & the $40 hourly rate, her estimated payments would be $5,400 for 2020.
17. **JP, History Videos.** JP has been our Videographer for years; however, no formal agreement has been made with him. As a result, he has been paid varying amounts over the years, & nothing for some years. This past year he did 21 videos & was paid $2,100. Although we can’t locate it, I believe that there was a proposal to pay him $100/video, with a minimum of $500 each year.
18. Last Orbit around the Firing Circle; Next Board Telecom Meeting - **Tues, 14 Jan 2020, 2000 hrs EST**
19. Adjournment **(Secretary: Turn-off Voice Recorder, PRESS 5\*)**