



FEA in Battle and on Attack at Capitol Hill

"The adage that we must all hang together or we will surely hang alone has never been truer."
– Hugh Pollard, FEA President 2007, November 2006 *FEA Exchange*

In times of change, leaders often reference history for guidance. History has a habit of repeating itself, and the history of the FEA is no exception. A look back at the past 25 years reveals periods where the business of the FEA Board of Directors shifted focus, from organizational structure to education and professional certification to membership development. But woven into the fabric of the FEA history are repeated shifts in the direction of Capitol Hill due to threats from legislators and regulators.

Individual efforts dot the early years of FEA's existence. For example, FEA President Andy Potter himself presented FEA comments on proposed 1031 regulations in Washington, DC in September of 1990.

In response to proposed changes to IRC §1031 at the federal level, FEA became more organized. Some may recall the initial meeting of the FEA Federal Legislative Subcommittee at the John Wayne Airport, Orange County in July of 1993. Soon afterwards, in November of the same year, the initial legislative proposal surfaced from the House Ways & Means Committee to redefine "Like Kind" to "Similar or Related in Service or Use."

The Board of Directors at its February 12, 1994 meeting officially established subcommittees to help guide the FEA in several critical areas. The Federal Regulatory Committee, co-chaired by Andy Potter and Kathleen Robinson, was charged with monitoring and advocating policies beneficial to the FEA while maintaining open communication with connections in Washington, DC.

The activities of the FEA Federal Regulatory Committee grew significantly more important nearly a decade later. In 2000, Jim Casterline took over duties of the FEA Presidency, and Andy Potter took on the responsibility of providing ongoing IRS updates. A few years later, in March of 2003 with Daniel McCabe as FEA President, New York Representative Amory Houghton introduced House Bill 22, and the FEA joined a coalition to create a lobby in response. In July of 2003, McCabe wrote, "At this time in FEA history we are in a battle! There is no question that the future of the QI industry is at stake. Make no mistake about it; if we do nothing, we will surely lose the fight." Efforts continued, and by December, McCabe's outgoing president's message noted, "We have temporarily halted the effort by congressional staffers to radically modify Section 1031."

Another significant shift of focus in the direction of Washington, DC developed with the Sec. 1.468B-6 proposed regulations. Again, FEA was on the attack. Dennis Helmick as FEA President in 2006 reported, "On Friday, February 3rd, the proposed regulations were issued by the IRS... The proposed Regulations are bad for QIs. They require the taxpayer to pay tax on the earnings on the exchange funds... As soon as we have developed our plan of attack (and it will be soon) we will communicate the plan to you for your help. Obviously, we are unhappy with this development, but the fight is not yet over." The 468B Ammunition Fund was created.



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25 YEARS AND COUNTING

FEA legislative efforts continued and coalitions strengthened in Washington over the following years. Assisted by Dave Franasiak of Williams & Jensen, FEA filed the petition to the FTC proposal in 2007. (There is no reference to an FTC proposal up until this point. You cannot be this vague. I suggest deleting this sentence.- MM) Later that year, FEA and Capitol Tax Partners filed comments with the IRS and the Department of Treasury on the compliance burdens imposed by proposed regulations under sections 468B and 7872. In 2007, FEA's efforts contributed to the elimination of negative provisions of the Farm Bill.

A threat to the industry arose in 2010 when Representative Michaud from Maine included a provision in the House Financial Regulatory Reform Bill calling for a study to be conducted by the Consumer Financial Protection Agency on Qualified Intermediaries and like kind exchanges. In 2011, FEA's Legislative Committee noted a vote by the delegates of the National Farmers Organization to eliminate 1031 exchanges because of their growing concern over foreign investors, insurance companies, lenders and commodity buyers with a concentration of capital, gaining advantage in farmland purchases..

The FEA Board is once again focused on quelling threats to the exchange industry. FEA's website displays the issues and threats that exist today. But the battleground is familiar and the strategies have proven successful in the past.