

501(c)(3) – To Be or Not To Be

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A recent survey of California branches pointed out the variety of structures within which our branches operate. This article highlights the pros and cons of the choices available to California AAUW branches. Your branch may be incorporated or not. Your branch may be granted tax exempt status under sections 501(c)(3) or 501(c)(4) of the internal revenue code. The information contained herein is just that – info only and not a recommendation for action. Branches should think long and hard with full understanding of the cost and time commitment before making any changes to their structure. Before plunging into the pros and cons of the various options you need to know what your branch is.

What are You?

Board members change frequently. If you inherited your jobs but have no idea what has been done in the past, searching the federal (IRS) data base of nonprofits will be illuminating.

To search the IRS data base go to <https://apps.irs.gov/app/eos/> in your browser. Enter your Federal EIN (XX-XXXXXXX) without the dash. First “Search All” to determine that you are using the correct EIN. To find out if you have been granted 501(c)(3) status, enter “Pub 78 Data” under select database. If your branch has been granted the designation as a 501(c)(3) organization, your branch name will show up because of your search. Note that any organization that has gross receipts in each taxable year of normally not more than \$5,000 need not file Form 1023 for recognition of exemption under Internal Revenue Code (IRC) Sec. 501(c)(3).

Basic Terms

IRC Sec. **501(c)(3)** and **501(c)(4)** are two sections of the internal revenue code that provide for exemption from federal income tax in most circumstances. Branches acquire **501(c)(4)** status as affiliates of AAUW national but may choose to change to **501(c)(3)**.

Those granted **501(c)(3)** status from the IRS can accept tax deductible contributions. If a branch successfully applies for IRC Sec. 501(c)(3) status, the IRS will issue a determination letter that grants such status. Do not be confused by the notation at the top right of the letter indicating Public Charity Status: **509(a)(2)**.

The AAUW California Special Projects Fund (SPF) is a separate 501(c)(3) corporation that can serve as the non-profit fiduciary agent for approved state and branch projects. Programs/projects using SPF can accept tax-deductible contributions to support the programs/projects. Please see <https://specialprojectsfund-ca.aauw.net/> for more information.

Per the survey most California branches are 501(c)(4) organizations. However, about one-third responded that they had been granted 501(c)(3) status by the IRS. Of these, about one-third, responded that they were not incorporated. More on incorporation later. So, for most branches . . .

The Choices are –

- Continue as a 501(c)(4) organization.
- Change to a 501(c)(3) organization.
- Form a 501(c)(3) organization in addition to your current 501(c)(4) organization.

Continue as a 501(c)(4) Organization – Continue to serve as a conduit for tax deductible contributions to various AAUW based programs/projects by having contributions made directly to them.

Pro –

- No change is necessary and there is no expense.
- More freedom to engage in legislative activities (lobbying) (see **discussion at end**).
- Branches may be able to direct scholarships locally with tax deductions for donors due to a relationship with a local college if contributions are made directly to the college.
- Branches can continue to raise funds for Tech Trek with tax deductions for donors if those funds are sent directly to the SPF for Tech Trek.
- Branches can continue to raise funds for AAUW Funds with tax deductions for donors if funds collected by the branch are forwarded to AAUW Funds because all branches are affiliates of the national AAUW organization which is a 501(c)(3) public charity. Saving donated funds from one year to another before forwarding to AAUW is not allowed by IRS regulations.
- Branches can solicit tax deductible contributions for a special mission-based project if the project is accepted by AAUW CA SPF if the funds are sent from the donors to the SPF. The SPF (including Tech Trek) withholds 5% of gross funds raised for SPF operating costs.

Con –

- Donations to the branch to conduct other projects are not deductible as charitable donations.
- Unreimbursed out of pocket expenses paid by members are generally not deductible.
- Branch membership dues are not deductible.
- Lack of funds to cover operating expenses due to lack of tax deductibility of donations directly to a 501(c)(4) branch.

Change to a 501(c)(3) Organization (Must notify AAUW national and sign new affiliate agreement)

Pros –

- Branch can accept charitable donations (and perhaps increase donations).
- Branch can track fundraising efforts more easily because donations are not made to a 3rd party.
- Branch can accept one check for dues and donations to projects other than national AAUW.
- Members can deduct unreimbursed out of pocket expenses paid.
- Members can deduct branch dues.
- Branch can solicit charitable contributions from businesses directly for branch projects rather than going through AAUW CA SPF.

- Branch can be listed on GuideStar as a tax-deductible charity.

Cons –

- Should incorporate to protect board members (need attorney and there is an expense).
- Not permitted to engage in substantive lobbying.
- Must complete IRS form 1023 which is very complex and requires a filing fee. Most branches will need outside assistance at a significant cost.
- Extensive record keeping. To comply with government rules related to donations, keeping detailed donation records is required.

Add a 501(c)(3) to branch's existing 501(c)(4))

Pro –

- Branch can accept charitable donations into the 501(c)(3) but not 501(c)(4).
- Member can deduct out of unreimbursed pocket expenses but only for 501(c)(3) activities.
- Less expensive and easier to file if adding 501(c)(3) rather than changing.
- Branch can conduct political and legislative activities in the 501(c)(4).

Con –

- Requires separate bank account.
- Requires separate accounting records.
- Requires two boards but there may be some overlap of members.
- Should incorporate 501(c)(3) to protect board members.
- Must keep 501(c)(3) and 501(c)(4) funds separate.
- Unable to use 501(c)(3) funds for 501(c)(4) activity.

Factors in Deciding –

- If your branch raises significant amounts of money by selling tickets to events (especially to the general public), becoming an IRC Sec. 501(c)(3) may be warranted. Ticket holders may take a deduction for the cost of the ticket less the value received if the branch is a 501(c)(3) but not if the branch is a 501(c)(4).
- If your branch does not raise significant amounts by selling tickets and/or ticket purchasers do not care if they receive a tax deduction, then remaining a 501(c)(4) makes sense.

Should you Incorporate?

Pros –

- Additional protection for board members.

Any individual or group of persons who operates as a charitable organization but does not create a nonprofit corporation or a trust, may be treated under California law as an "unincorporated association." Under this classification, the individuals may be exposed to substantial risk of personal liability if the organization is sued. (California Attorney General's Guide for Charities)

- Eases solicitation of contributions.

Cons –

- Requires some paperwork and expense.

Legislative Activities (Lobbying)

As non-partisan organizations, AAUW and all its affiliates are permitted to be political, but not partisan. We can lobby for issues supported by AAUW such as pay equity but are prohibited from campaigning for a political party or candidate. Voter education and registration activities are permitted for both 501(c)(3) and 501(c)(4) affiliates if they are unbiased.

The extent of legislative activities (lobbying) permitted for 501(c)(3) organizations is much more limited as compared to 501(c)(4) organizations, as described below.

501(c)(3) Legislative Activities

- Not permitted to engage in substantial legislative activities (lobbying). An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for purposes of proposing, supporting, or opposing legislation, or advocates the adoption or rejection of legislation.
 1. Substantiality based on facts and circumstances including time and money devoted to activity.
 2. Alternative is expenditure test – lobbying expenses less than 20% of exempt purpose expenditures less than or equal to \$500,000.

501(c)(4) Legislative Activities -

- May engage in an unlimited amount of lobbying (i.e., attempting to influence legislation), provided that the lobbying is related to the organization's exempt purpose.
- Section 18 of the Lobbying Disclosure Act of 1995, P.L.104-65, prohibits section 501(c)(4) organizations from receiving federal grants, loans, or other awards if they engage in lobbying activities, even if they conduct the lobbying with their own funds.

Resources

IRS Compliance Guide for 501(c)(3) Public Charities (<https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>) – Description of activities that may jeopardize tax-exempt status, record keeping and retention, federal tax filings and more.

IRS Publication 557 Tax-Exempt Status for Your Organization (<https://www.irs.gov/pub/irs-pdf/p557.pdf>) - Discussion of the rules and procedures for organizations that seek recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code (the Code).

Attorney General's Guide for Charities

(https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/guide_for_charities.pdf) – Best practices for nonprofits that operate or fundraise in California.