The Practical Implications of Affiliated 501(c)(3)s and 501(c)(4)s

It is not uncommon for a 501(c)(3) to establish an affiliated 501(c)(4). Unquestionably, during a long-term lobbying campaign to change public policy, affiliated organizations enjoy many advantages.

There are issues an affiliated organization needs to watch for. Above all, the 501(c)(3) and 501(c)(4) must be separate legal entities and the 501(c)(3) must be able to demonstrate that it is not subsidizing, directly or indirectly, the partisan electoral work of the affiliated 501(c)(4).

This fact sheet explains in general terms how affiliated organizations should act, according to federal tax law, in some common situations. For more specific details see our publication *The Connection: Strategies for Creating and Operating 501(c)(3)s, 501(c)(4)s, and Political Organizations*.

How do you establish two separate legal entities?

The IRS requires affiliated organizations to be and act as separate legal entities. There are a number of ways to do this. Foremost, the 501(c)(3) and the 501(c)(4) must separately incorporate: this includes having unique names (although they can be similar), different Employer Identification Numbers (EINs), and separate and distinct bylaws. In addition, each organization should use different letterhead, maintain separate bank accounts and financial records, and create separate board of directors, with unique meetings and board minutes.

What if each board of directors has the same members?

Having some overlap between the two boards is fine but you may want to include some unique board members on the 501(c)(4) board that are not on the 501(c)(3) board to help demonstrate separation between the two organizations. Be forewarned that if the 501(c)(4) engages in any partisan activities, the IRS will look at the 501(c)(3) board of directors as a factor in determining the independence of the affiliated organizations. Therefore, it is recommended that affiliated organizations not have complete overlap in board members.

Can a 501(c)(3) and a 501(c)(4) share employees, office space and equipment?

Yes, a 501(c)(3) and a 501(c)(4) may share employees, office space, and equipment. In fact, the affiliated organization could have one staff that divides it time between the 501(c)(3) and the 501(c)(4). It is essential that each organization pay its full share of all salary, equipment costs, rent, and other overhead. This ensures that the 501(c)(3) does not subsidize the 501(c)(4). Affiliated organizations should sign a cost sharing agreement that details how each organization will capture their respective expenses and when payment is due.

Can a 501(c)(3) make grants to a 501(c)(4)?

A 501(c)(3) may make grants to a 501(c)(4). The grant must be used exclusively for 501(c)(3) permissible purposes. If any of the grant is used for lobbying, it will count against the 501(c)(3)'s lobbying limits.

Grants should have an accompanying grant agreement that sets the conditions of the funding. The grant agreement should prohibit the 501(c)(4) from using any of the grant for partisan electoral activities. In addition, unless the grant agreement specifically prohibits the grant's use for lobbying, it also needs to limit how much of the grant will be spent on direct and/or grassroots lobbying. Without this delineation, if the 501(c)(4) uses any of the grant to lobby, the entire grant will count against the 501(c)(3)'s grassroots lobbying limits.

The 501(c)(3) is responsible for overseeing the 501(c)(4)'s use of the grant. This can be done through periodic reports back to the 501(c)(3). Within its periodic reports, the 501(c)(4) should account for all its uses of the grant, including whether funds were used for any grassroots or direct lobbying. This will allow the 501(c)(3) to ensure that the grant is used within the grant agreement's terms.

Grants from a 501(c)(3) to a 501(c)(4) should not be made to cover fundraising costs or general support of the 501(c)(4) (this is to protect the 501(c)(3) from the grant being used for impermissible purposes). As a side note, a 501(c)(3) and 501(c)(4) may also raise funds jointly, however, each organization must pay its share of the fundraising costs.

Can a 501(c)(3) loan funds to a 501(c)(4)?

A 501(c)(3) may loan funds to a 501(c)(4). Unlike grant funds, a 501(c)(4) may use a 501(c)(3) loan for general support or fundraising and its use does not count against the 501(c)(3)'s lobbying limits. However, a 501(c)(3) SHOULD NOT loan funds to a 501(c)(4) if the 501(c)(4) plans to use the funds for partisan electoral activities or if other factors and circumstances would tend to show that the money will be used for a non-501(c)(3) purpose.

The loan should have an accompanying loan agreement that demonstrates that the loan is made for a definite term, at a market rate of interest, and with adequate collateral from the 501(c)(4).

What if a 501(c)(4) loans or grants money to a 501(c)(3)?

When a 501(c)(4) loans or grants money to a 501(c)(3), there are little to no restrictions on the money. A 501(c)(4) can pay for any or all of a 501(c)(3)'s lobbying, research, or nonpartisan electoral activities.

May a 501(c)(3) and a 501(c)(4) share a website?

It depends. See Guidelines for Joint 501(c)(3) and 501(c)(4) Websites.