

PRESENTED AT

5th Annual Higher Education Taxation Institute

June 4-6, 2017

Austin, Texas

Student and Affiliated Organizations

Kelly Farmer, University of Minnesota, Minneapolis, MN

**Bertrand M. Harding Jr., Law Offices of Bertrand M.
Harding Jr., Alexandria, VA**

**Paul Van Dieren, University of Notre Dame,
Notre Dame, IN**

STUDENT AND AFFILIATED ORGANIZATIONS

I. Are Student/Affiliated Organizations Separate Legal Entities for Tax Purposes?

A. The first step in analyzing student/affiliated organization issues is to determine whether the organization is a separate legal entity for tax purposes. In this regard, the IRS and the courts distinguish between those entities that are legal entities in their own right and those organizations that are not separate legal entities because they are either (1) nothing more than a “formless aggregation of individuals,” or (2) an integral part of the university. (For a discussion of the “formless aggregation of individuals” concept, see *Trippe v. Commissioner*, 9 TCM 622 (1950); PLR 201008050; GCM 34648).

B. If the organization is a formless aggregation of individuals, its activities, finances, etc. are ignored.

C. If the organization is an integral part of the university, then its activities, finances, etc. are treated as the university’s activities, finances, etc. In this regard, the IRS and the courts have looked to the following factors to determine whether one organization (the subordinate) will be treated as an “integral part” of another organization (the primary):

1. The subordinate organization’s activities are of a type that would not be an unrelated trade or business if conducted by the primary organization;

2. The subordinate organization’s activities are “necessary and indispensable” to the operations of the primary organization; and

3. The subordinate organization’s activities are controlled by the primary organization. (*Geisinger Health Plan v. Commissioner*, 100 T.C. 394 (1993), *affd* 30 F.3d 494 (3d Cir. 1994); *Nonprofits Insurance Alliance of California v. U.S.*, 74 AFTR 2d 94-6893 (Ct. Fed. Cl. 1994); PLR 9722042).

D. An organization is treated as a legal entity separate and apart from the university, however, if it incorporated under state law.

E. If the organization is not incorporated, then the issue is whether it will be treated as an “association taxable as a corporation” or as a non-legal entity formless aggregation of individuals. This determination is generally made by looking at whether the organization possesses certain “corporate characteristics,” including:

1. The existence of an organizing document of some kind (e.g., a constitution or bylaws);

2. Centralized management consisting of regularly elected officers who represent the organization;
3. An objective to carry on a particular business or activity;
4. Continuity of life;
5. Control over its own income and expenses; and
6. Whether the individuals believe that liability for organization debts is limited to organization property.

F. All of these factors need not exist for the organization to be treated as a corporation; rather, the determination is made using a facts and circumstances test that weighs the “pro” corporation factors against the “con” factors.

G. Nuances of a parent organization’s exempt status may have a bearing upon whether student organizations should or can be incorporated into the parent. There are differences among (1) a section 501(c)(3) parent organization, (2) an organization whose income is exempt under section 115 parent organization, or (3) a parent organization that is treated as an integral part of the State. The separate status of a section 501(c)(3) entity and that of some 115 organizations or that of an integral part of a State may be mutually exclusive. See attached diagram.

II. What if Student/Affiliated Organization is Separate Legal Entity?

A. As a general rule, the organization will have to obtain its own tax-exempt status (usually under section 501(c)(3)). Otherwise, the organization is a taxable legal entity and is required to file its own income Form 1120 corporate income tax return and pay corporate income tax on any net income it receives.

B. One way for the organization to obtain its own tax-exempt status is to file an application with the IRS. This means that the organization would have to (1) ensure that its organizational documents contain all of the language that the IRS says must be in such documents (organized exclusively for charitable purposes, proper dissolution clause, etc.), and (2) confirm that the organization’s activities are charitable/educational in nature within the meaning of section 501(c)(3). The organization’s governing documents likely do not contain the IRS-required language, but it would be a fairly simple matter to amend them so that they do. And, most organizations likely conduct activities that would be regarded as falling within the scope of section 501(c)(3), but if not, it might be possible to obtain exemption under section 501(c)(4) (social welfare organizations) or section 501(c)(7) (social clubs).

C. If the organization can meet these section 501(c)(3) organizational and operational requirements, it will need to file an application for tax-exempt status on Form

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Student and Affiliated Organizations

Also available as part of the eCourse

[Tax Issues for Student Organizations and Associated Entities](#)

First appeared as part of the conference materials for the
5th Annual Higher Education Taxation Institute session
"Student Organizations"