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Avoiding Drama in the 501(c) Family:
Managing Relationships Between
Charities, Social Welfare Organizations, Labor Unions,
and Business Leagues

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I. INTRODUCTION

There are a variety of bases for an organization to obtain tax-exempt status under Section 501(a) of the Internal Revenue Code (“the Code”). Organizations exempt from tax under different sections of the Code often seek to collaborate with each other, and it is vital for these organizations to understand how their different exempt status requirements may interact.

This paper provides an overview of the exemption requirements for organizations exempt under section 501(c)(4), 501(c)(5), or 501(c)(6) of the Code. It then addresses some key compliance considerations, such as unrelated business income tax (“UBIT”) implications, political and lobbying restrictions, and the section 4958 excess benefit transaction rules. It concludes with some tips for structuring collaborations between these types of organizations and organizations exempt under section 501(c)(3) of the Code.

II. EXEMPT STATUS REQUIREMENTS

Section 501(c)(4), (5), and (6) organizations have several elements in common.

- Unlike section 501(c)(3) organizations, they are not required to request recognition from the Internal Revenue Service (“IRS”) for recognition of their tax-exempt status, though they have the option to do so by filing a Form 1024, *Application for Recognition of Exemption under Section 501(a) of the Internal Revenue Code*.
 - Note, however, that 501(c)(4) organizations are required to provide notice to the IRS, as described below, and the IRS is releasing a new Form 1024-A application for exemption with more detailed questions applicable only to 501(c)(4) organizations. At that point in time, 501(c)(4) organizations will not be able to apply for exemption by filing the Form 1024.
- They must file a Form 990-series return annually.
- They must be primarily operated for the exempt purposes enumerated in their respective Code sections and must not allow their assets or income to inure to the benefit of private individuals.
- They may engage in lobbying, as long as it is related to their exempt purpose.
- They may engage in supporting or opposing candidates for public office; however, the IRS has ruled that such activity does not further their exempt purposes.¹ Therefore, they must be primarily engaged in other activities that do further their exempt purposes.

¹ This restriction is contained in the regulations applicable to section 501(c)(4) organizations (Reg. §1.501(c)(4)-1(a)(2)(ii)) and was expanded to section 501(c)(5) and (6) organizations by GCM 34233 (December 3, 1969).

A. **Exempt Status Requirements for section 501(c)(4) organizations.** The Code provides for the exemption of two types of organizations under section 501(c)(4)—social welfare organizations and local associations of employees. This paper focuses on social welfare organizations, as they are the more commonly encountered type.

The Code states that social welfare organizations are civic leagues or organizations not organized for profit, but operated “exclusively” for the promotion of “social welfare.” The Code provides no further definitions for these terms.

The Treasury Regulations (“regulations”) provide a bit more information, explaining that an organization will meet the statutory requirements if it is primarily engaged in promoting in some way the common good and general welfare of the people of a community.² This includes organizations operated primarily for the purpose of bringing about civic betterments and social improvements.³ The Code refers to being operated “exclusively,” but the regulations have interpreted this to mean “primarily,” which has raised some questions over the years. The “primarily” test is not clearly defined, but generally requires taking into account all of an organization’s activities (including time, effort, and expenditures).

We focus here on the two key requirements, which have been developed in revenue rulings and court cases:

1. Promoting social welfare
2. Benefitting a community rather than individual members

1. What constitutes the promotion of social welfare? Some examples of what constitutes social welfare include:

- In Rev. Rul. 68-224, 1968-1 C.B. 262, a nonprofit organization that conducted an annual festival centered around regional customs and traditions qualified for exemption under section 501(c)(4). The organization provided the community with recreation and a means for citizens to express their interest in the community’s history, customs, and traditions.
- In Rev. Rul. 78-131, 1978-1 C.B. 156, an organization that existed to develop and encourage interest in painting, sculpture, and other art forms by conducting a community art show in a noncommercial

² Reg. §1.501(c)(4)-1(a)(2)(i).

³ Id.

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