

Optimizing the Use of Non-Charitable Entities

January 14, 2022

James P. Joseph
Arnold & Porter Kaye Scholer LLP

Kay Walther
Blazek & Vetterling LLP

Changing the world takes more than just 501(c)(3)s

	501(c)(3) Private Foundation	501(c)(3) Public Charity	Limited Liability Company (LLC)	501(c)(4) Social Welfare Org*	527 Political Org
Purpose	<ul style="list-style-type: none"> Charity, education, religion or science Contributions from limited sources 	<ul style="list-style-type: none"> Charity, education, religion or science 	<ul style="list-style-type: none"> For profit, advocacy, political and charitable activities 	<ul style="list-style-type: none"> Social welfare or advocacy (lobbying) 	<ul style="list-style-type: none"> Political
Examples	<ul style="list-style-type: none"> Gates Foundation Ford Foundation 	<ul style="list-style-type: none"> Sierra Club Foundation American Red Cross Heritage Foundation 	<ul style="list-style-type: none"> Chan Zuckerberg Initiative Emerson Collective 	<ul style="list-style-type: none"> Sierra Club National Rifle Association Crossroads GPS 	<ul style="list-style-type: none"> Sierra Club Political Committee EMILY's LIST American Crossroads
Tax Benefits	<ul style="list-style-type: none"> Tax exemption Contributions are deductible Gift tax deduction 	<ul style="list-style-type: none"> Tax exemption Contributions are deductible Gift tax deduction 	<ul style="list-style-type: none"> May deduct certain costs/contribution of services if donated to a c3 	<ul style="list-style-type: none"> Tax exemption Gift tax exemption 	<ul style="list-style-type: none"> Tax exemption Gift tax exemption
Lobbying	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Limited 	<ul style="list-style-type: none"> Unlimited 	<ul style="list-style-type: none"> Unlimited 	<ul style="list-style-type: none"> Rare (and usually taxable)
Election-Related Activity	<ul style="list-style-type: none"> Can't support or oppose candidates Nonpartisan activities OK 	<ul style="list-style-type: none"> Can't support or oppose candidates Nonpartisan activities OK 	<ul style="list-style-type: none"> Varies 	<ul style="list-style-type: none"> Partisan activity cannot be primary activity May be taxable 	<ul style="list-style-type: none"> Primary purpose is partisan activity

* For these purposes, the rules relating to c4s and c6 trade associations are the same.

Limited Liability Companies (LLCs)

- **Limited Liability Companies (LLCs) are highly customizable and can be surprisingly tax efficient.**
 - LLCs are not tax-exempt, but they limit liability and can still be a tax efficient component of your giving strategy.
- **LLCs have appealing flexibility.**
 - The governance structure of your LLC is up to you.
 - LLCs may be member-managed or managed by a board, and it may be guided by additional advisory boards.
- **LLCs can be used by c3s for purposes that are related or unrelated to the c3s exempt purposes.**
- **LLCs can also be used for non-c3 purposes to achieve broader programmatic goals (e.g., mission investing, JVs, lobbying/political engagement).**

3

LLCs and tax efficiency

- **LLCs can help you run your charitable entities – and deduct the costs.**
 - If you form an LLC, its employees can perform work for your private foundation or public charity under a resource sharing agreement.
 - The cost of the services provided to a charitable entity, like a private foundation or public charity, are deductible as an in-kind contribution.
- **LLCs can be useful and tax-friendly intermediaries for giving.**
 - An individual or a grantor trust that gives to a public charity or private foundation via an LLC can still deduct their donation even though it was made through the for-profit LLC.

4

LLCs and branding

- **LLCs can help you brand a subset of your charitable/advocacy/political/for-profit activities.**
 - A single-member limited liability company (SMLLC) is generally treated as a branch of its parent for tax purposes, but are respected for state law purposes as separate entities.
 - Contributions to SMLLCs wholly owned by a U.S. tax-exempt organization are treated as tax-exempt and would be deductible if the single member is a c3.
 - But offer liability protection for the sole member.
 - These subsidiary SMLCCs can be a useful tool in branding a particular activity/project and can serve as an interim step to spinning out a separate affiliated organization.

5

Other Uses of LLCs and C Corporations

- **LLCs/C corps provide you with greater flexibility in running non-charitable activities.**
 - If you form an LLC/C corp, its employees can also provide services to a 501(c)(4), assist on political giving, and for-profit investing.
 - The value of the services provided to a charitable entity, like a private foundation or public charity, are deductible as an in-kind contribution.
- **Use as a UBIT blocker and liability shield for for-profit activities.**
 - If a c3 has a wholly owned for-profit subsidiary or a SMLLC (that elects to be taxed as a C corp), the LLC/corporation acts as a liability shield and a UBIT blocker.
 - With the new UBIT siloing rules, if all UBTI-generating activities are placed in a for-profit sub, losses can be used to offset gains, regardless of the trade or business that gave rise to the income and losses.
- **A SMLLC can be also used as a holding company for certain activities (such as international offices and affiliates.**

6

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Optimizing the Use of Non-Charitable Entities

Also available as part of the eCourse

[2022 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the
39th Annual Nonprofit Organizations Institute session
"(2:25 p.m.) Utility of Non-Charitable Entities"