

# Council of Clubs Political Organizations

# Example

- It is November, 2016 and you decide you want to take action after the election. You call several like-minded individuals and discuss the results of the election. A decision is made to participate in the resist movement and they decide to form a club to be chartered by the SDCDP. At your first meeting someone states that the group needs to raise funds for producing flyers, purchasing snacks, renting a meeting place. A person is chosen to be the finance director and goes to the bank to open an account. The banker asks the person, “what type of organization are you”? Have you applied and received employment identification number from the IRS? The response is no but states that the organization will be a non-profit. The banker then asks if the organization is a 501 (c) (3) organization which is the traditional non-profit organization. The person responds that it will be a non-profit political organization.

# Example continued

- The banker suggests that the organization is probably an unincorporated nonprofit association. The finance director is confused and decides to meet with the other board members to decide how they wish to operate the club.
- The finance director advises the board that the club is probably an unincorporated nonprofit association and is asked to explain what that means.

# Unincorporated Nonprofit Associations

Many so-called [nonprofits](#) are simply small groups of people who come together temporarily to perform some social good. They might raise money for a limited purpose such as helping a neighbor or sending the local high school band to a competition. Some groups simply bring in such limited income that a formal business model may not be necessary.

Legally, an unincorporated nonprofit association forms whenever at least two people agree to pursue a common lawful purpose that is not for profit. If the endeavor is for profit, it is called a partnership or joint venture.

# Unincorporated Nonprofit Associations - Continued

- However, if that group or association continues indefinitely, it may be subject to certain [legal](#) requirements, even though it hasn't filed for [incorporation](#) under its state's incorporation laws.
- For example, an unincorporated association may need to file tax returns, whether as a taxable or tax-exempt entity. Additionally, some states have registration requirements.
- There may also be multiple state and local registration requirements no different from a similar nonprofit corporation, such as charitable solicitation registration, out-of-state qualifications to do business, and local business registration.

# The Disadvantages of an Unincorporated Nonprofit Association

- Members of an unincorporated nonprofit association may be exposed to personal liability for the obligations of the association if state laws do not explicitly provide for [limited liability](#) (for example, California provides for limited liability for members of an unincorporated nonprofit association).
- Regardless, the law is still less certain regarding personal liability as compared to corporations. Therefore, an unincorporated association may not be ideal if the group's activities might create concerns about contract or tort liability (two common areas where liability issues arise), or if potential members, [board members](#), and supporters might be deterred by such concerns.

# California unincorporated association

- In California, unincorporated association is defined as an “unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not.”

# After the board meets

- The board meets and advises the finance director to apply for an employer identification number with the IRS.
- Comment: never use an individuals social security number to open a bank account for an organization.
- Please see IRS Form SS-4 that is attached

# IRS FORM SS-4 and Section 527 organization

- If your club wishes to open a bank account then the club needs to apply for an EMPLOYER IDENTIFICATION NUMBER (EIN) with the IRS.
- The form should be completed with the name of the club, address, name of responsible party, etc.
- Let's focus on Line 9a. Type of Entity and Line 10 Reason for applying.
- Line 9a should be completed by checking the "OTHER NONPROFIT ORGANIZATION" Box and then noting "SECTION 527 ORGANIZATION"
- LINE 10 should be checked "BANKING PURPOSE".

# Section 527 Organization Defined

- Political organizations that qualify under section 527 are granted tax-exempt status and taxed only on certain income. Organizations that do not qualify are taxed on all income. A political organization is any organization, including a party, committee, association, or fund, that is organized and operated primarily to directly or indirectly accept contributions and/or make expenditures for an **exempt function**.

# Section 527 Exempt Function

- An exempt function is the influencing or attempting to influence the selection, nomination, election, or appointment of an individual to a federal, state, or local public office, to an office in a political organization, or as a Presidential or Vice-Presidential elector. An exempt function does not necessarily involve explicitly advocating for or against the individual. For example, when determining whether an issue advocacy communication is for an exempt function, the IRS looks at such things as whether it identifies a candidate, identifies his or her position on the issue and this has been raised to distinguish the candidate from others, is timed to coincide with an election, targets voters in a particular election, and is not part of an ongoing series of similar communications by the organization on the same issue.

# Section 527

- A political organization does not need be incorporated or otherwise have formal [organizing documents](#). A separate bank account in which political campaign funds are deposited and disbursed only for [exempt function](#) purposes can qualify as a political organization. All clubs that wish to be chartered with the SDCDP must have club by-laws and those could be considered the organizing documents.
- If an organization has no formal organizing documents, consideration is given to statements (such as a resolution) of the organization's members when it was formed that they intend to operate the organization primarily to carry on exempt functions. Federal or state initial registration filings (for example, Statement of Organization, FEC Form 1) made by the organization under applicable election laws, also can serve as evidence that the entity meets the organizational test.

# Section 527

- 527 organizations are subject to tax only on political organization taxable income. This is the organization's gross income, excluding exempt function income, less \$100 and any allowable deductions. Exempt function income is any amount received, to the extent that it is segregated to use for an exempt function, as:
  - contributions of money or other property, membership dues, fees, or assessments,
  - proceeds, which are not received in the ordinary course of business, from political fundraising and entertainment events or from the sale of campaign materials, and proceeds from conducting a bingo game.

# IRS RULES FOR POLITICAL ORGANIZATIONS

## Filing Requirements

- Political parties; campaign committees for candidates for federal, state or local office; and political action committees are all political organizations subject to tax under IRC section 527.
- Section 527 organizations are generally required to file one or more of the following:
  - An [initial notice](#)
  - [Periodic reports](#) on contributions and expenditures
  - [Annual income tax returns](#) and
  - [Annual information returns](#)
- A political organization must have its own employer identification number (EIN), even if it does not have any employees. To get an EIN, an organization must file [Form SS-4, Application for Employer Identification Number](#). For more information about obtaining an EIN (including how to apply online), see [Employer ID Numbers \(EIN\)](#) .
- Additionally, many political organizations must electronically file their periodic reports. In order to electronically file these reports, an organization needs the username and password issued to it after filing its initial notice. If you have forgotten or misplaced this username and password, please contact [TE/GE Customer Account Services](#) to request a replacement.
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# Form 8871 initial notice

- To be exempt, a political organization must give notice [electronically](#) to the Service that it is a political organization described in Internal Revenue Code section 527, unless an [exception](#) applies. An organization must file an amended notice within 30 days after the occurrence of a material change in the information reported, and a final notice upon [termination](#) of the organization. All electronic notices are filed at the IRS [Political Organizations Filing and Disclosure](#) site.

# Form 8871 - Exceptions from Requirement to File

- The following political organizations are *not* required to file Form 8871:
- Any organization required to report to the Federal Election Commission as a [political committee](#),
- Committees of state or local candidates,
- State or local committees of a political party , and
- Any organization reasonably anticipating that it will always have less than \$25,000 for any taxable year.
- **Small political organizations**
- An organization is not required to file Form 8871 if it reasonably anticipates that it will not have gross receipts of \$25,000 or more for any taxable year. If an organization in fact has annual gross receipts of \$25,000 or more for any taxable year, it must file Form 8871 within 30 days of receiving \$25,000 in a single taxable year to continue to be tax-exempt.

# Contents of Initial Notice (Form 8871)

An organization must provide the following information in its Form 8871 notice:

- Name and address (including business address, if different)
- E-mail address
- Purpose
- Names and address of its officers, [highly compensated employees](#), contact person, custodian of records, and members of its board of directors
- Name and address of, and relationship to, any [related entities](#) (within the meaning of Code section 168(h)(4))
- Whether it is claiming an exemption from [filing Form 8872](#) as a [qualified state and local political organization](#) or an [exemption from filing Form 990](#) as a caucus or association of state or local officials.

# Definition of a Qualified State or Local Political Organization

- A qualified state or local political organization is a [political organization](#) that meets the following requirements:
- The organization limits its [exempt function](#) solely for the purpose of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any state or local political office or office in a state or local political organization.
- The organization is required under a state law to report to a state agency (and the organization does so) the information that otherwise would be required to be reported on Form 8872. The organization will meet this requirement even if the state law does not require reporting of the identical information required on Form 8872, so long as at least the following information is required to be reported under the state law and is reported by the organization:
  - The name and address of every person who contributes \$200 or more in the aggregate to the organization during the calendar year and the amount of each contribution, and
  - The name and address of every person to whom the organization makes expenditures aggregating \$500 or more during the calendar year, and the amount of each expenditure.

# Definition of a Qualified State or Local Political Organization - Continued

- However, if the state law requires the reporting of any additional information specified in Internal Revenue Code section 527(j)(3), the organization will meet this requirement only if it reports that additional information to the state agency;
- The state agency makes the reports filed by the organization publicly available;
- The organization makes the reports filed with the state agency publicly available in the manner described in Code section 6104(d); and
- No federal candidate or office holder controls or materially participates in the direction of the organization, solicits contributions to the organization, or directs any of the organization's disbursements.

# What is a 501(c)(4)?

- Typically referred to as "social welfare" groups, these are nonprofit organizations including civic leagues or [local volunteer fire departments](#), for example, that in theory are designed to promote, well, social welfare causes. "501(c)" is just the IRS's designation in the tax code for nonprofit groups, and (4) is the subsection of groups we are concerned with here. There are other types of nonprofits that fall under the "501(c)" umbrella, but they are subject to different requirements.

# IRS Definition of Section 501(c)(4)

- Internal Revenue Code section 501(c)(4) provides for the exemption of two very different types of organizations with their own distinct qualification requirements. They are:
- [Social welfare organizations](#): Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, and
- [Local associations of employees](#), the membership of which is limited to the employees of a designated person(s) in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.
- [Homeowners associations](#) and [volunteer fire companies](#) may be recognized as exempt as social welfare organizations if they meet the requirements for exemption. [Organizations that engage in substantial lobbying activities](#) sometimes also are classified as social welfare organizations.

# So where is the connection to electoral politics?

- These groups are allowed to participate in politics, so long as politics do not become their primary focus. What that means in practice is that they must spend less than 50 percent of their money on politics. So long as they don't run afoul of that threshold, the groups can influence elections, which they typically do through advertising.

# What is the difference between a 501(c) (4) and a Super PAC

- Super PACs must disclose their donors while 501(c)(4)s do not. If you are a donor looking to influence election but do not want to reveal your identity, the 501(c)(4) is an attractive option through which to send your cash.

# Exempt Organization - Exemption Application

- Organizations applying for tax-exempt status must submit two applications: First, if they have not previously received an Employer Identification Number, they must apply for one.
- Second, to be recognized as exempt under section 501(a), most organizations must file an application for recognition of exemption with the IRS. Most organizations applying for exemption under section 501(a) (other than section 501(c)(3)) use [Form 1024](#). Form 1024 has [instructions](#) and checklists to help you provide the information required to process your application. The IRS will not process an incomplete application.
- The IRS will recognize an organization as tax-exempt if it meets the requirements of the Internal Revenue Code. See [Types of Tax-Exempt Organizations](#) and [Publication 557](#), *Tax-Exempt Status for Your Organization*, for more information.

# Federal vs State political committee (PAC)

- What are the differences between a federal and a state or local committee.
- A federal committee can accept contributions from individuals, federal PAC's and Native American organizations.
- They can make contributions to federal, state and local candidates (some local candidates may only accept contributions from individuals).

# Federal vs State political organization (PAC)

- A state or local committee may receive contributions from individuals, federal and state PAC's, businesses, unions.
- They can make contributions to state and local candidates (some local candidates may only accept contributions from individuals). They can also make contributions to federal candidates or federal PAC's but they must keep in mind that contributions of \$1,000 or more to a federal candidate or a federal PAC could trigger the need to register with the Federal Election Commission.

# Federal registration requirements Form 1

- Political committees must file this form no later than 10 days after receiving contributions or making expenditures in connection with a federal election aggregating in excess of \$1,000 during a calendar year.
- Local political party committees must file this form no later than 10 days after making contributions or expenditures in connection with a federal election aggregating in excess of \$1,000.

# State and local registration requirements – Form 410

- Persons (including an officeholder or candidate), organizations, groups, or other entities that raise contributions from others totaling \$2,000 or more in a calendar year to spend on California elections, must register with the Secretary of State and report all receipts and expenditures. “Contributions” include monetary payments, loans and non-monetary goods and services received or made for a political purpose.

# State and local registration requirements – Form 410

- General Purpose Committee
- A committee is a “general purpose committee” if its principal activity is supporting or opposing a variety of candidates or measures voted on in different elections.
- This is the type of committee that a club will most likely be registered as in California. However, what are the plans for the club? Do they plan to support only state candidates or state and local candidates?

# Form 410 State committee

- A state committee makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, or in more than one county; it does not make over 70% of its contributions or expenditures in a single local jurisdiction. State contributions include contributions to other state general purpose committees. All political party committees (including county central committees) are state committees.

# Form 410 County committee

- A county committee makes more than 70% of its contributions or expenditures to support or oppose candidates or measures voted on in a single county, or in more than one jurisdiction within one county. This includes contributions to other general purpose committees in the same county.

# Form 410 City committee

- A city committee makes more than 70% of its contributions or expenditures to support or oppose candidates or measures voted on in a single city, or in one consolidated city and county. This includes contributions to other city general purpose committees in the same city.
- A city or county committee may make up to four contributions in a calendar year to candidates for elective state office whose districts are within the same jurisdiction and is not required to change its status to a state committee.