

Guidelines For Joint 501(c)(3) and 501(c)(4) Websites

The IRS prohibits 501(c)(3) organizations from supporting or opposing candidates, or otherwise intervening in campaigns for public office. However, a 501(c)(3) may form a 501(c)(4) organization, which is permitted to engage in unlimited lobbying and limited partisan political activities.¹

Maintaining separation between these entities is critical to protecting the tax-exempt status of the 501(c)(3) organization. One key factor in proving this required separation is that the 501(c)(3) must be able to demonstrate that it is not subsidizing, directly or indirectly, the political work of its affiliated 501(c)(4). For a more detailed discussion of operating affiliated tax-exempt organizations, see our publication *The Connection: Strategies for Creating and Operating 501(c)(3)s, 501(c)(4)s and Political Organizations*.

Maintaining separation can become tricky when dealing with website content that is shared between a 501(c)(3) and its affiliated 501(c)(4). This fact sheet provides guidance for 501(c)(3)s and (c)(4)s on designing websites to avoid impermissible political campaign intervention by a 501(c)(3).

- If a 501(c)(3)'s affiliated 501(c)(4) does NOT support or oppose candidates for office, there generally is no need to worry about separate website content. However, even if a 501(c)(3) organization has its own separate website, the IRS – in a 2008 directive – suggested having a separation in the timing, proximity and references between places on the 501(c)(3)'s website where the (c)(3) takes a position on an issue, and where the (c)(3) or its affiliated (c)(4) provides information about candidate positions on the same issue.
- If a 501(c)(3)'s affiliated 501(c)(4) is engaging in political campaign intervention, the safest strategy is to maintain separate websites – one for the 501(c)(3) and another for the 501(c)(4). In the 2008 directive, the IRS indicated it will “not pursue, at this time, cases involving a link between a website of a section 501(c)(3) organization and the home page of a website operated by a related section 501(c)(4) organization.” Until the IRS provides further enforcement guidance, this directive remains in effect.²
- If a 501(c)(3) and its affiliated 501(c)(4) choose to maintain a single website for both entities, IRS guidance suggests the website must clearly distinguish between the content that belongs to the 501(c)(3) and the content that belongs to the 501(c)(4), so that the organizations may be identified as separate entities.³

¹ This fact sheet specifically addresses joint 501(c)(3) and 501(c)(4) websites – since they are the most common type of affiliated organizations. However, this fact sheet would equally apply to 501(c)(5), 501(c)(6) or any other non-charitable organizations.

² This, of course, assumes that the 501(c)(3) does not otherwise engage in impermissible campaign intervention when linking to the 501(c)(4)'s website. For example, the 501(c)(3) could not say “click here to see our list of endorsed candidates” and then direct people to its sister organization's website.

³ This IRS guidance was offered in the form of a Technical Advice Memorandum (TAM) (TAM 200908050). A TAM is guidance furnished by the Office of Chief Counsel upon request, in response to technical or procedural questions. The advice rendered represents a final determination of the position of the IRS, but only with respect to the specific issues in the specific case in which the advice is issued. Thus, TAM 200908050 is not binding on all nonprofits, but it does indicate the IRS's approach toward shared websites. Given the specific facts at hand in TAM 200908050, the IRS ultimately concluded that a 501(c)(3) had impermissibly intervened in an election where a 501(c)(4)'s website was housed as a set of pages within the (c)(3)'s website. Under the two organizations' cost-sharing agreement, the 501(c)(4) reimbursed the 501(c)(3) for its share of website costs. However, every page of the website, including those paid for by the 501(c)(4),

- The 501(c)(3) main page may link to the 501(c)(4)'s main page (or vice versa), but neither organization should link to the specific programmatic content of the other organization. Some tax practitioners believe that if the 501(c)(3) and 501(c)(4) websites each have different banners, logos, etc., then it might be possible for the 501(c)(4) to link to the 501(c)(3)'s "about us" or donation page – if the 501(c)(4) makes it clear that it is linking to the page of its sister organization. For example, a web designer may use a pop up between the two pages to alert the viewers that they are leaving one site and continuing to another. Of course, there should never be a direct link from 501(c)(3) content to a 501(c)(4)'s political content, or vice versa.
- The 501(c)(3)'s banner, logo, address, site links, disclaimer, or similar identifying information specific to the 501(c)(3) should not appear on any of the 501(c)(4) web pages. This was a major factor considered by the IRS in its 2009 guidance.
- It may also be helpful to use a layout and design for the portion of the website devoted to the 501(c)(3) that is distinct from the portion of the website devoted to the 501(c)(4). That way, each portion has a different "look and feel," allowing for easy distinction between the two.
- Each entity should pay its proportional share of costs of the website.

Even with these safeguards, it is unclear how the IRS would view a 501(c)(3)/(c)(4) shared website.

Because a website is a form of communication, a 501(c)(3) is prohibited from posting anything on its website that favors or opposes a candidate for public office. Posting partisan content on the organization's website is treated the same as distributing printed materials or making oral statements or broadcasts that favor or oppose a candidate. If a 501(c)(3)'s website links to an unaffiliated 501(c)(4) organization that is engaged in partisan political activity, the IRS will make a determination as to whether the 501(c)(3) is promoting, encouraging, recommending or otherwise urging viewers to use the link to get information about candidates and their positions. See our publication *Rules of the Game* for more information on how the IRS approaches this fact-specific analysis.

It is also likely permissible for a 501(c)(4) to pay for and maintain a single website without having its affiliated 501(c)(3) create or maintain a website. Thus, a (c)(4) may likely post content on its website about the programmatic activities or events of any 501(c)(3) – including its affiliated 501(c)(3) – even if the 501(c)(3) does not pay for the placement of the content.

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contained the 501(c)(3)'s banner logo, site links and disclaimer. While the 501(c)(4)'s pages contained its own logo and address, they also contained the 501(c)(3)'s banner and related links – including, problematically, those that housed the 501(c)(4)'s candidate questionnaires and endorsements.