

Taking Care of Business: Managing Chapter and Conference Taxes and Business Affairs

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Here is some information concerning the business affairs and tax status of AAUP chapters and conferences. This outline should provide AAUP leaders with enough information to respond to basic questions. This should not be construed as legal advice; more complicated questions, or questions requiring specific legal guidance, can be passed along to the chapter's lawyer or accountant. If the AAUP legal office or business office can be of further assistance as a general resource, please contact us.

I. AAUP Chapter and Conference Tax Status: What Type of Tax-Exempt Organization Are You?

The tax status of the national AAUP is independent from the tax status of AAUP chapters and conferences. Chapters and conferences are free to select the organizational structure and categories that best suit their needs, so long as they comply with the law and AAUP policies and practices.

National AAUP has a federal tax exemption under Section 501(c)(3) as a charitable and educational organization. Often chapter officers call to find out if the national AAUP has a group exemption. **The AAUP does not have a group exemption.** The tax status of the national AAUP is independent of the tax status of AAUP chapters and conferences.

Section 501(c) of the Internal Revenue Code establishes several types of tax-exempt organizations. The universe of tax-exempt groups is vast, encompassing such disparate organizations as fraternal lodges like the Elks, the American Red Cross and its local chapters, religious denominations and orders, federal credit unions, cemetery companies, hobby clubs, and the AFL-CIO. The common feature of all organizations falling under Section 501(c) is that they are relieved of the obligation to pay federal tax on their income. Section 501(c) subdivides the universe of tax-exempt entities into twenty-five categories.

Three categories of tax exemption are most relevant to AAUP chapters and conferences. These are: charitable and educational organizations exempt under Section 501(c)(3), social welfare organizations exempt under Section 501(c)(4), and labor unions exempt under Section 501(c)(5). An organization may qualify for exemption under more than one category, but it is obligated to select only one, as no "dual" exemption is possible.

¹ This outline was last reviewed in July 2009. Legal developments since then are not reflected in this outline.

As noted above, the national AAUP is a 501(c)(3) organization. Some AAUP chapters and state conferences are also 501(c)(3)s; others are 501(c)(4)s. AAUP collective bargaining chapters and a few state conferences are 501(c)(5)s.

Please note that AAUP chapters at both public and private institutions generally have reporting requirements to the IRS.

A. Charitable and Educational Organizations: 501(c)(3)s

The essence of this type of group is its provision of benefits to the public as a matter of general social good. In addition to the exemption from federal tax, the chief positive consequence of charitable status is the deductibility of dues and contributions. Charitable organizations also enjoy a reputational advantage in speaking authoritatively on matters of public concern. At the same time, 501(c)(3) organizations are absolutely prohibited from participation in elections for public office, and they are also limited in the amount of legislative lobbying in which they may engage. Some AAUP 501(c)(3) organizations include the Ohio and New York State Conferences. The Michigan Conference, which initially obtained its own exemption as a labor organization under 501(c)(5), established an affiliated charitable foundation exempt under 501(c)(3).

B. Social Welfare Organizations: 501(c)(4)s

Social welfare organizations overlap in function with charitable organizations in that both advance the public good. However, contributions to a 501(c)(4) are *not* tax deductible. In turn, social welfare organizations are freer in two respects. First, they are generally not required to apply formally to the Internal Revenue Service (IRS) for recognition of their status as social welfare organizations. Second, they may engage in a broader range of legislative lobbying and political activities than charitable entities. Examples of social welfare organization include the American Association of University Women, the National Rifle Association, and the National Abortion and Reproductive Rights Action League. Most AAUP chapters that have not filed with the IRS for a tax exemption function as 501(c)(4) organizations.

C. Labor Organizations: 501(c)(5)s

The class of labor organizations under 501(c)(5) includes both traditional unions and related entities such as a group publishing a union newspaper or one devoted to providing strike and lockout benefits. The IRS has stated, “[G]eneral usage defines a labor organization as an association of workers who have combined to protect or promote the interests of the members by bargaining collectively with their employers to secure better working conditions, wages, and similar benefits.” Payments made to a labor union, like those that go to a social welfare organization, are not deductible as charitable contributions. (They may, however, be tax deductible as union dues or professional expenses.) **AAUP Section 501(c)(5) organizations include all collective bargaining chapters.**

D. PACs

501(c)(4) and 501(c)(5) organizations may also establish separate political action committees (PACs) to fund partisan political work. Some PACs focus on state and local elections; others focus on federal elections exclusively. Some AAUP collective bargaining chapters that have state PACs include the Rutgers Council of AAUP Chapters, the Nevada Faculty Alliance, and the Michigan State Conference. 501(c)(3) organizations may not establish a PAC, because, as noted above, such charitable organizations are absolutely prohibited from participating in elections for public office.

E. Some Examples of Different AAUP Structures Under the Internal Revenue Code

Take the example of a small advocacy chapter (or non-collective bargaining chapter) that has no mandatory dues but that may have a few hundred dollars in a bank account. What is its tax status? The chapter, if it cared to, could undertake the rather cumbersome and time-consuming process of applying to the IRS for recognition as a charitable organization under Section 501(c)(3). It is, however, unrealistic to expect small and relatively informal chapters to devote themselves to this undertaking, and little benefit would be derived from the deductibility of contributions, because the amount of money involved is relatively small.

A more practical solution may be to function as an organization exempt under Section 501(c)(4): social welfare organizations can, in general, simply declare themselves to be exempt under this category without applying to the IRS for formal recognition. (However, they still must file a Form 990 with the IRS.) In so doing, chapters can avoid back-up withholding on the interest earned on their bank accounts. (See Section IX). However, such chapters cannot advise donors that contributions are deductible as charitable contributions. They can engage in lobbying and, as a secondary activity, political activity. The social welfare organization model also applies to state conferences, which may not have formally applied for recognition as a public charity.

Note: A special situation is presented by an established non-collective bargaining chapter that decides to consider the prospect of becoming a certified bargaining agent. At some point the chapter becomes a 501(c)(5) labor organization.

In sum, constituent components of AAUP have several different types of federal tax status. State conferences and chapters are free to select whatever federal tax-exempt status best meets their particular needs.

For more information about tax-exempt organizations, check out <http://www.irs.ustreas.gov/charities/index.html>.

II. Application for Recognition of Exemption, Form 1024

Collective bargaining chapters must file for 501(c)(5) tax status. Chapters should consult with their attorneys regarding filing. The Office of Staff Counsel has developed some general information for AAUP chapters filing for labor union tax status and that you may want to share with your chapter's attorney. If you would like a copy, contact AAUP's legal office. You can download Form 1024 from the IRS Website at <http://www.irs.gov/formspubs/index.html>.

III. The Lobbying and Political Activities Permissible for Tax-Exempt Groups

Major differences exist between charitable and other tax-exempt groups in the nature and amount of legislative and electoral activity they may undertake. In essence, Congress has created the following trade-off: if a group wishes to take advantage of the full deductibility of charitable donations as a 501(c)(3), it may engage in only limited legislative lobbying and it is absolutely prohibited from any partisan political campaign activity. If, on the other hand, a group wishes to undertake an extensive lobbying program or to support political candidates, it may not be a charity, and its donors may not take charitable deductions for their financial support.

While the statute states that charities may engage in legislative lobbying to an "insubstantial" degree, the IRS has never provided a clear definition of "insubstantial." (Some lawyers have pegged the limit informally, although not definitively, at less than 5% of a group's expenditures.) A special "safe harbor," under Section 501(h), is available to charitable organizations for tracking lobbying expenditures based on a percentage of their exempt purposes budget. This requires differentiating several types of lobbying ("grassroots" and "direct") and also requires some recordkeeping.

The absolute prohibition on participation by charities in elections for public office prevents, among other activities, the endorsement of candidates, and the provision of funds, staff, or other assistance to campaigns of candidates for public office. Social welfare organizations ((c)(4)s) and labor unions ((c)(5)s) can establish PACs and undertake partisan political endeavors so long as they comply with applicable federal and state laws.

For more information about permissible advocacy activities for tax-exempt organizations, visit the Alliance for Justice at <http://www.afj.org/for-nonprofits-foundations/>; Charity Lobbying in the Public Interest Project/Independent Sector at http://www.independentsector.org/programs/gr/advocacy_lobbying.htm; and OMB Watch at <http://www.ombwatch.org/npadv>.

IV. Deductibility of AAUP Dues and Donations

As noted, dues and contributions to Section 501(c)(3) charitable organizations are fully deductible, except to the extent that payments may result in direct benefit to the donor, such as the fair market value attributable to Academe (\$30). Dues paid to social welfare (501(c)(4)), labor (501(c)(5)), or professional (501(c)(6)) organizations as ordinary and necessary business

expenses are deductible only to taxpayers itemizing on their federal tax returns and only to the extent that their aggregate job expenses and miscellaneous related deductions exceed 2% of their adjusted gross income. This category, reported on line 21 of Schedule A for Itemized Deductions, covers unreimbursed employee expenses, including work-related travel and education, as well as union and professional dues. (In addition, itemized deductions must be reduced by 3% of the amount by which the employee's adjusted gross income exceeds a certain amount; that amount is adjusted annually for inflation.)

Because the national AAUP is a charitable entity, professors may take a charitable deduction for their AAUP dues, less the value of direct benefits received.² Academe is considered a direct benefit worth \$30.

Even though the \$30 attributable to Academe cannot be taken as a charitable deduction, it can be considered a "miscellaneous deduction" related to the taxpayers' profession, deductible if they itemize and if their total miscellaneous deductions exceed 2% of their adjusted gross income.

One major caveat: we have proceeded on the unstated assumption that the professors are not represented by certified local AAUP agents for purposes of collective bargaining on their campuses. If they were, the deductibility of their dues would be analyzed in an entirely different manner. Their dues would then be, say, about 1% of their salaries paid to their local chapter. The chapter then forwards a smaller portion of this amount to national AAUP, reflecting national dues. We have concluded in the past, after close review, that the national portion of these dues may not be taken as a charitable contribution. The reason, in brief, is that the essence of a charitable contribution is a voluntary payment to a charitable entity. For AAUP members in collective bargaining chapters, the national dues are, in most cases, overshadowed by the size of the local union dues payment and, while the union may be viewed as only a remitting agent for the national dues, the professor does not have the option of declining to pay the national dues if she wants to maintain membership in the local union. Thus, based on the advice of outside legal counsel, we have concluded that national dues paid by members of collective bargaining chapters are not deductible as charitable contributions; they may, however, be deductible as union dues.

If the professors make an additional contribution to the national AAUP beyond their regular dues to AAUP, they are fully deductible because the national AAUP is a charitable entity. If AAUP were tax exempt under some other category, the additional donation would be deductible only if it qualified as an ordinary and necessary business expense. Note, however, that some AAUP entities, which are not themselves charities, have related charitable foundations to which such additional contributions may be directed.

² After Restructuring, the national AAUP will be a 501(c)(6), which will affect the deductibility of membership dues. As of the time of this writing, however, the AAUP remains a 501(c)(3).

V. Boilerplate Provisions for Governing Documents

The IRS will look to an organization's enabling instrument, such as articles of incorporation or a constitution, for assurances that the AAUP chapter is not set up to benefit private interests. If your chapter's constitution does not include a prohibition against private inurement, you may want to consider amending it to include the following provision:

No part of the net earnings of this organization shall inure to the benefit of or be distributed to any director, employee or other individual, partnership, estate, trust or corporation having a personal or private interest in the chapter. Compensation for services actually rendered and reimbursement for expenses actually incurred in attending to the affairs of the Chapter shall be limited to reasonable amounts.

In addition, it is helpful to include in your constitution a specific reference to the section of the Internal Revenue Code under which you seek exemption. For example, the following language is often used by collective bargaining chapters:

This AAUP chapter is organized and will be operated to qualify as a labor organization exempt from federal income tax under Section 501(c)(5) of the Internal Revenue Code for the above stated purposes.

Frequently, exempt organizations have language in their enabling documents limiting the use of their assets upon dissolution. The following language is the standard boilerplate:

Upon dissolution of the chapter, its assets shall be disposed of exclusively for the purposes of the chapter or distributed to such organizations that shall, at the time, qualify as exempt organizations under Sections 501(c)(3), such as the national AAUP at 1133 19th St. NW, Washington, D.C. 20036.

See generally AAUP, "Recommended Bylaws for AAUP Chapters" (www.aaup.org/NR/rdonlyres/BE76F4CE-F1FC-4AC7-BA18-2AE8160BA78B/0/SampleBylaws.doc or <http://www.aaup.org/AAUP/involved/startchapter/samplebylaws.htm>).

VI. Annual Information Returns (990 Form) to the IRS

AAUP chapters at both public and private sector institutions must file annual information returns, called "990 forms," with the IRS. This requirement applies to all organizations that are exempt under section 501(c), including 501(c)(3), 501(c)(4), and 501(c)(5) chapters, as long as the organizations have "formal" organizing documents (such as articles of association or a constitution; bylaws are not organizing documents).

The 990 filing requirement previously applied only to those chapters with gross receipts above \$25,000; however, in 2006 a new law was passed requiring all tax-exempt organizations to file some version of the Form 990. Now, for tax years beginning on or after January 1, 2007, chapters with annual receipts of \$25,000 or less must file an electronic Form 990-N, also called the e-Postcard. Failure to do so for three years in a row will result in loss of the chapter's tax-exempt status. See <http://www.irs.gov/charities/article/0,,id=169250,00.html> for more information on the 990-N.

Chapters with over \$25,000 in annual gross receipts will need to file either a simplified 990EX form or the "classic" 990 form. You may determine which form your chapter or conference would need to file according to the chart below:

<i>May file 990-EZ for:</i>	<i>If gross receipts are:</i>	<i>If total assets are:</i>
2008 tax year (filed in 2009)	< \$1 million	< \$2.5 million
2009 tax year (filed in 2010)	< \$500,000	< \$1.25 million
2010 and later tax years	< \$200,000	< \$500,000

You can download a current 990 form from the IRS Website at <http://www.irs.gov/formspubs/index.html>; additional information is available at <http://www.irs.ustreas.gov/charities/article/0,,id=185561,00.html>. AAUP-specific information is available at <http://www.aaup.org/NR/rdonlyres/2A49C56B-2FA9-435F-892D-C108C8616BD2/0/Noticetochaptersrenew990requirementsNov2007.pdf> and <http://www.aaup.org/NR/rdonlyres/8C521628-1121-4E65-BFAE-B24A353AE644/0/Supplementalinfotochaptersre990NApril2008.pdf>.

VII. Annual Reports to the U.S. Department of Labor by Collective Bargaining Chapters at Private Institutions.

Under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), as amended, labor unions in the private sector, including local AAUP chapters that serve as collective bargaining agents, are required to report certain financial information and administrative practices to the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor. As OLMS makes clear, **this annual reporting requirement excludes those unions "composed solely of state, county, and municipal employees."** OLMS, "Completing Your LM-3," at 1 (U.S. Department of Labor, 1990). Unions with receipts of less than \$250,000 per year may use the LM-3 form, which is an annual report form that discloses information about a "union's financial condition, including its assets, liabilities, receipts, and disbursements." *Id.* at i. Unions that have \$250,000 or more in annual receipts are required to file the more detailed LM-2 form. Unions with less than \$10,000 in total annual receipts may file the abbreviated LM-4 form. See <http://www.dol.gov/compliance/topics/unions-reporting.htm#basic> for guidance on which form to file and links to the forms themselves.

Generally OLMS mails blank reporting forms to all unions with detailed instructions for their completion. The LM-2, -3, and -4 forms must be filed annually, within 90 days after the end of the union's fiscal year, and must be signed by the president and treasurer or corresponding principal officers of the reporting union. Extensions are not generally granted.

The OLMS provides a variety of information to assist private sector unions in complying with the law, including bonding and record-keeping requirements. For further information, go to <http://www.dol.gov/compliance/topics/unions-reporting.htm#>. Please confer with your chapter lawyer and accountant for further guidance.

VIII. Annual Reports to the U.S. Department of Labor by Union Officers and Staff

The Department of Labor also now requires that union officials and staff file an LM-30 form with the Department under certain circumstances. A list of FAQs explaining the application of the LM-30 requirements to AAUP staff and officers is available here: <http://www.aaup.org/AAUP/about/bus/faqlm30.htm>.

The LM-30 is an annual report that must be filed with the DOL by individual "union officers" and "non-clerical" staff who receive anything of value over \$250.00 (beyond regular business transactions) from an employer/vendor/business. In addition, disclosure is required if the spouse or minor child of an officer or non-clerical employee receives anything of value from, had a financial interest in, or received income from any of these entities. The form also requires the disclosure of "anything of value" (over \$250) beyond regular business from (1) all employers whose employees a union or any of its affiliates represents or actively seeks to represent, (2) employers that do business with those employers, and (3) employers that do business with trust funds that service the union's members.

There is a *de minimis* exception, under which union officials and staff are not required to report receipt of items of insubstantial value if (1) the item is worth \$250 or less, (2) the employer/business/vendor provides the same or similar items to non-union individuals under similar circumstances (e.g., a fruit basket in every hotel room), and (3) the items are given sporadically or occasionally (e.g., a holiday gift). In addition, although the exception appears to include only "sporadic or occasional gifts," the DOL indicated in its most recent overview that it will not enforce the reporting requirement with respect to numerous small, frequent gifts, such as coffee at bi-weekly meetings, so long as the combined value of the gifts does not exceed \$250 per union official.

For those persons who do need to file an LM-30, the form must be received by the DOL within 90 days after the end of the officer's or employee's fiscal year, which is typically December 31.

Additional information regarding the LM-30 requirements, including links to FAQs and to the forms themselves, may be found here: http://www.dol.gov/esa/olms/regs/compliance/GPEA_Forms/blanklmforms.htm. Note that, as described on that page, the Department of Labor has recently announced that filers may choose between the old and new LM-30 form; they are not required to use the new form.

IX. Chapter Employer I.D. Numbers

If a chapter or conference seeks to open a bank account, the bank will probably ask for an employer identification number ("EIN"). In addition, chapters will need an EIN to file their form 990 (whether a 990-N, 990EZ, or regular 990). **Chapters should not use the national AAUP employer identification number.** They can get their own by submitting a SS-4 form. In the space for principal activity, AAUP chapters that are exempt under Section 501(c)(3) or Section 501(c)(4) might list something like "faculty educational group." The i.d. number is assigned fairly promptly.

The person who submits the SS-4 may get on an IRS mailing list and receive tons of materials concerning payroll taxes. Assuming the chapter has no employees, it can toss all of this out and write to the IRS indicating that the chapter has no employees and does not anticipate having any. Eventually, the mailings will probably stop.

One AAUP chapter that called the AAUP's legal office maintained its funds in an account at the college. The college required the chapter to provide an employer i.d. number, just as a bank would.

Again, you can download the SS-4 form from the IRS Website, at <http://www.irs.gov/pub/irs-pdf/fss4.pdf>, or you may apply online, at <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>.

X. Backup Withholding on Interest on Bank Account

Interest earned by chapters or conferences on accounts in banks and credit unions should be exempt from backup withholding because the chapters are tax-exempt entities.

If you have erroneously incurred backup withholding on the interest, here are some tips provided several years ago by tax counsel:

- The statute of limitations is three years, so refunds before that period would not be available.
- Check on whether the chapter filed the certificate for exemption from backup withholding with the bank. Also check on what "employer identification number" is used on the account.
- Read the small print on the regular backup withholding exemption certificate, which may have some advice on refunds.
- Then contact the IRS to obtain a form to claim a refund on backup withholding.
- Complete the form, file it, and start waiting.

XI. Conclusion

To reiterate:

- national AAUP is a 501(c)(3) organization without a group exemption;
- chapters and conferences can become 501(c)(3)s only if they apply to the IRS for that status, and the application process can be time-consuming;
- generally, chapters and conferences can declare themselves to be 501(c)(4)s without applying to the IRS; they cannot, however, receive deductible contributions;
- AAUP collective bargaining chapters and conferences must file for 501(c)(5) tax status;
- the tax-exempt status of chapters and conferences determines the nature and amount of legislative and electoral activity they may undertake;
- the deductibility of dues and donations depends upon the tax-exempt status of chapters and conferences;
- chapters and conferences should include in their governing documents a prohibition against private inurement, a specific reference to the IRS Code under which they operate, and a dissolution provision;
- chapters and conferences with formal organizing documents (which will likely be most chapters and conferences) will need to file with the IRS an annual "990" information form;
- chapters and conferences will need to apply for their own employer identification number if they do not already have one; and
- interest earned by chapters and conferences on bank accounts should be exempt from backup withholding.

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