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## ***AAUW Branch Tax Status after Restructuring\****

[\*Note: The IRS term for branches and states is “Sub-Units.” The information in this briefing applies to both.]

### **AAUW Current Topics Briefing #6**

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#### **Introduction**

On July 1, 2007, delegates to the AAUW Biennial Convention in Phoenix, AZ, voted unanimously to approve sweeping changes to AAUW’s organizational structures. The vote signaled the Boards of Directors to move forward with strategic initiatives to help create a viable and sustainable 21st century organization. As a result of the restructuring vote, the Association (AAUW) and the AAUW Educational Foundation (EF) are to combine many of their assets and activities to form a streamlined, mission-driven organization with a single set of elected officers. This restructuring is moving forward and, at the June 2009 AAUW Convention in St. Louis, will culminate in a vote on the Bylaws for the restructured entity.

#### **The Restructuring**

##### ***Current Structure***

The Association (the membership organization) is tax-exempt under IRS Section 501(c)(4), making it a “public” or “social welfare” organization.

- Contributions to it are not deductible;
- It can engage in unlimited “lobbying;” and
- It is subject to restrictions on “political activities.”

AAUW branches are tax-exempt under IRS Section 501(c)(4) and, accordingly, are subject to the same rules.

The Educational Foundation (EF) is tax-exempt under IRS Section 501(c)(3), making it a “public charity.”

- Contributions to it are generally deductible as charitable donations;
- The ability of EF to lobby is limited; and
- It can engage in absolutely no political campaign activities.

Although the Association is a Section 501(c)(4) organization, most of its activities would be appropriate for a Section 501(c)(3) organization. It is not unusual for charitable activities to be conducted by non-charitable tax-exempt organizations, such as social welfare organizations that qualify under Section 501(c)(4).

The Association’s non-charitable activities include a limited amount of lobbying and the periodic publication of a “voter guide.”

At the present time, the Association is the “central organization,” and the branches are the “subordinate organizations” with respect to a “group tax exemption” for federal income tax purposes. Although the Association and the branches constitute a “group” for exemption purposes, the organizations have never chosen to file a “group tax return.”

### ***After Restructuring***

Once restructuring takes effect in June of 2009, the “new” organization will be known as AAUW. AAUW will control both: (a) the Section 501(c)(3) “public charity,” which will be the dominant organization, and (b) the Section 501 (c)(4) “public” or “social welfare” organization with limited activities related to lobbying and “Get Out the Vote” initiatives.

AAUW’s organizational structure is commonly referred to as a “complex structure.” The term applies to two or more commonly controlled tax-exempt organizations, particularly when the tax-exempt organizations are of different types. It is common for a Section 501(c)(3) organization and a Section 501(c)(4) organization to be operated in tandem. Many well known organizations that are commonly thought of as a single entity are actually two or more organizations constituting a complex structure. Therefore, there is nothing at all unusual about the complex structure of the Association and the EF as it currently exists. Nor will there be anything unusual about the complex structure of AAUW as it will exist after the restructuring is finalized.

### ***Effect of Restructuring on the Status of Branches***

Because restructuring will result in the Section 501(c)(3) becoming the dominant organization, **the question has arisen as to whether each of the AAUW branches must or should (a) become a subordinate organization of the Section 501(c)(3) in the context of a group exemption and/or (b) convert from Section 501(c)(4) status to Section 501(c)(3) status.**

Our lawyers firmly state that **“for the following reasons, such changes are neither needed nor warranted:”**

- Because the Association will continue to have a small Section 501(c)(4) organization after the restructuring, there is no need for AAUW branches to do anything at all. The fact that the National AAUW Section 501(c)(4) will shrink and be controlled by the Section 501(c)(3) organization is immaterial.
- After AAUW’s restructuring, the Section 501(c)(3) organization will be the dominant national organization -- the central organization. Most branches will likely wish to continue to be involved in a group exemption under the “new” AAUW. Since a Section 501(c)(3) organization can be the central organization with respect to a group of Section 501(c)(4) organizations, the group exemption can continue without branches needing to convert to Section 501(c)(3) status.
- To convert to Section 501(c)(3) status, each branch would need to amend its own organizing documents to provide for a charitable purpose and the correct liquidation provisions. Because there are more than 1,000 branches, this would necessitate a substantial amount of legal fees and involvement with lawyers in all 50 states. Even if the legal costs and filing fees averaged no more than \$5,000 for each branch, more than \$6,500,000 would be required. And \$5,000 per branch might not be sufficient. Establishing 501(c)(3) status is complex and

expensive, and maintaining it requires considerable record-keeping, monitoring, and reporting. Note: If a branch decides to convert to Section 501(c)(3) status, that branch is responsible for the costs of conversion.

- If converted from Section 501(c)(4) status to Sections 501(c)(3) status, some of the smaller branches would become private foundations rather than public charities because they have too few donor-members to qualify as a public charity (roughly 50 to 100 donor-members are needed to qualify). But, private foundations are ineligible to be subordinate organizations with respect to a group exemption. In some cases, a smaller branch that would otherwise be an ineligible private foundation might be able to become a supporting organization of the Section 501(c)(3) or 501(c)(4), and therefore qualify as a public charity. But this conversion would be an expensive, tedious and clumsy process.

- Individual branches that are interested in the benefits of charitable status under Section 501(c)(3) can selectively convert to public charity status without affecting the other branches. In addition, some branches may be best served by keeping their Section 501(c)(4) status and creating a new affiliated “Local Charitable Branch” that is controlled by the local Branch. A pre-existing local branch and a new local charitable branch can themselves constitute a “complex structure” on the local level, echoing the complex structure of AAUW on the national level. Moreover, local charitable branches can become part of a new group exemption for Section 501(c)(3) organizations, with either the Section 501(c)(3) or the Section 501(c)(4) as the central organization. These decisions are options at the local level, but would entail considerable effort and expense to the local branch.

### ***Effect of Restructuring on Tax Deductibility of Dues and Donations***

Since most branches will continue to be involved in the Section 501(c)(4) group exemption after restructuring, nothing will change regarding the tax deductibility of individual donations or dues payments to these branches. In order for branch dues or donations to be tax deductible to the individual making the payment, the branch must convert to Section 501(c)(3) status.

After restructuring, donations to the national AAUW Section 501(c)(3) public charity will be tax deductible, but donations to the national AAUW Section 501(c)(4) public welfare organization (that supports our lobbying work and voter guide) will continue not to be deductible. A large portion of each dues payment to AAUW national will be deductible by the individual member; but because a small and yet undetermined portion of the dues payment will be allocated to help support Section 501(c)(4) activities, the actual deductible amount of the dues payment is still under consideration. Members will receive specific national dues deductibility information by November 1, 2008.

### **Conclusion**

Although the restructuring will not be highly visible to the outside world, it will be an important change in the structure and operations of our organization. Once the new AAUW Bylaws are approved by our members in June 2009, our central organization will be the Section 501(c)(3) public charity part of AAUW. A small Section 501(c)(4) public welfare organization will be retained for aspects of our public policy and government relations work. The changes will *not necessitate major changes for AAUW branches* and will have no bearing on the tax exempt status of AAUW branches. Those that are covered currently by our Section 501(c)(4) group tax exemption will remain so, unless and until they take action

to change the branch status. Likewise any branches that are already tax exempt under Section 501(c)(3) will also remain so unless further action is taken by them.

Any change in tax-exempt status desired by an AAUW branch must be undertaken by that branch, with the associated paperwork, costs and legal fees also undertaken by that branch. It is anticipated that most branches will not make the decision to change to the Section 501(c)(3) status and will continue in their current Section 501(c)(4) status for the foreseeable future – a decision that they may change at any future time.