VENABLE® LLP

Multi-Entity Organizations

Presentation to Greater Washington Society of CPAs

George E. Constantine, III, Esq., Venable LLP

June 24, 2014

Today’s Presenter

George E. Constantine, III, represents numerous trade and professional associations as a partner in the District of Columbia headquarters office of Venable LLP. He works extensively on tax, governance, and transactional matters for association clients, providing counseling to hundreds of associations and other tax-exempt organizations.

George is the former Staff Counsel of the American Society of Association Executives (ASAE), the national society for trade and professional association executives. He is a frequent author and speaker on legal topics of relevance to the association community.

www.Venable.com/nonprofits

Agenda

1. Related Entities
   - Why?
   - Why not?
   - Exempt
   - Taxable
2. Concerns
   - Separateness
   - Liability and Tax Risks
3. Safeguards
   - Policies
   - Communication
   - Boards
   - Accounts
   - “Look and feel”
   - Events

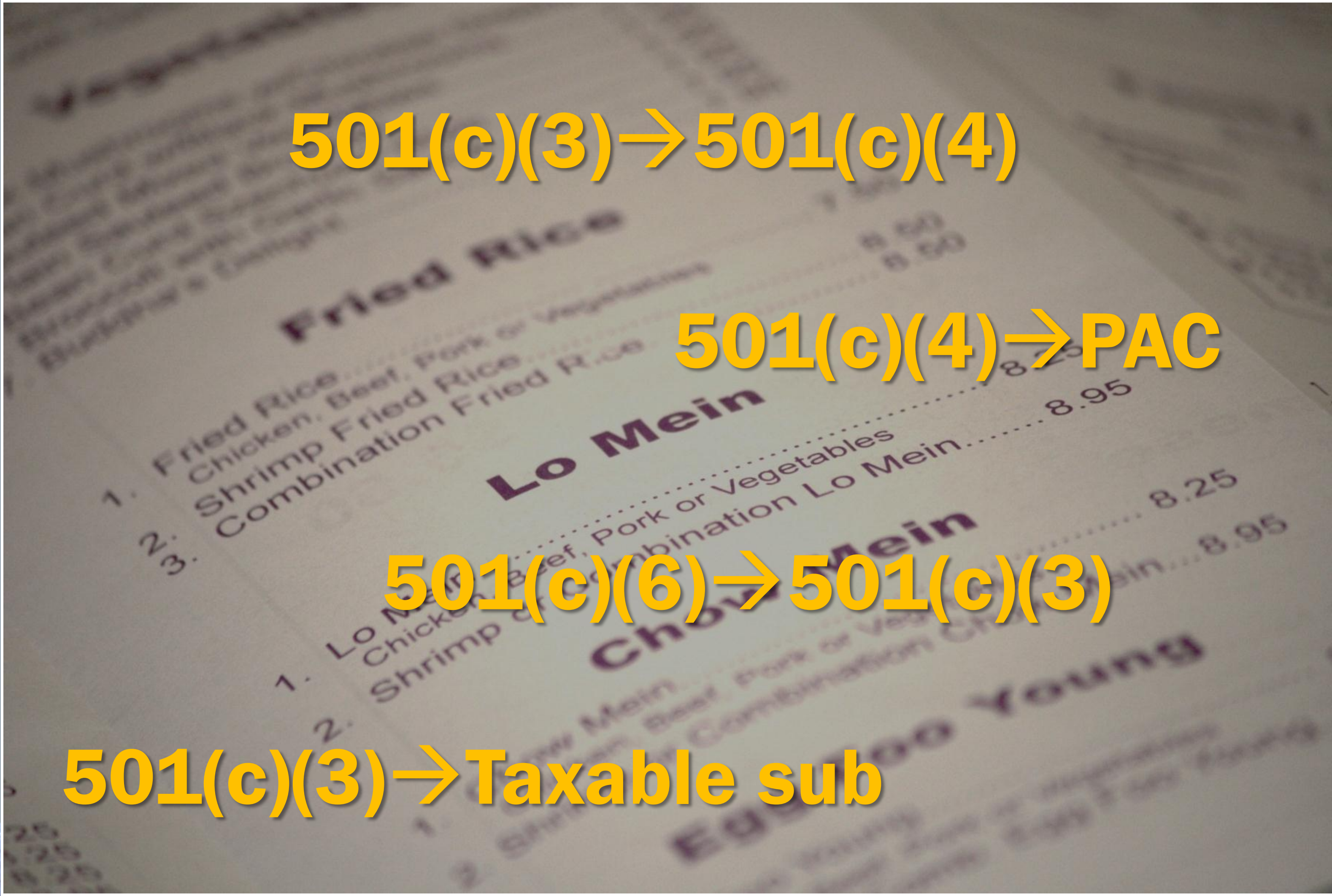
Related Entities – Why?

- Protect exempt status
- Liability and risk management
- Expand activities
- Maximize revenue
- Enhance tax benefits for supporters

Related Entities – Why Not?

- Burdensome / time-consuming
  - Formation
  - Ongoing operation
- Mission creep
- Added complexity for compliance

Organizational Options Menu



501(c)(3)→501(c)(4)

501(c)(4)→PAC

501(c)(6)→501(c)(3)

501(c)(3)→Taxable sub

Concerns – Separateness

The activities of a separately incorporated subsidiary cannot ordinarily be attributed to its parent organization unless the facts provide “clear and convincing evidence that the subsidiary is in reality an arm, agent, or integral part of the parent.”

- PLR 200132040

Concerns – Separateness

Key factors for separateness include:

- Inadequate capitalization of the subsidiary, given its business goals and operations
- Financial support of the subsidiary's operations by the parent
- A joint accounting and payroll system
- The subsidiary's lack of substantial business contacts with anyone except the parent

Concerns – Separateness

Key factors for separateness include (continued):

- Commingling of assets
- Reference to the subsidiary as a “division” in financial statements
- Corporate property is used as if jointly owned
- Similar look/name

Concerns – Separateness

Failure to follow corporate organizational requirements will present risks:

- Meetings of directors
- Officer elections
- Annual reports
- Board oversight
- Meeting minutes
- Allocations of costs and expenses

Example – TAM 200908050

- This case involved a 501(c)(3) - 501(c)(4) relationship
- The 501(c)(4) was housed within 501(c)(3) website, and there was an expense allocation
- Each 501(c)(4) web page included 501(c)(4)'s name at the top
- However—501(c)(3) framing, 501(c)(3) disclaimer and copyright notice
- "Virtually indistinguishable"

Safeguards

- Shared staff, shared space, shared overhead need to be carefully and properly accounted for
- Not just a good shared services agreement, but a solid approach of monitoring utilization (timesheets are key here)
- Separate meetings
- Manage board overlap
- Close attention to Internet and other communications

Safeguards

- Adequate capitalization for for-profit subsidiaries
- Profit-motive issue for for-profit subsidiaries
- Separate accounts
- BUT—also risk of going too far in the other direction

Questions?

George E. Constantine, III, Esq., Venable LLP
GEConstantine@Venable.com
t 202.344.4790

To view an index of Venable's articles and presentations or upcoming seminars on nonprofit legal topics, see www.Venable.com/nonprofits/publications or www.Venable.com/nonprofits/events.

To view recordings of Venable's nonprofit programs on our YouTube channel, see www.youtube.com/user/VenableNonprofits.