

Section:	GP-1 General Provisions	Approval Date:	9/25/2015
Policy:	GP-1.4 Nonprofit and Federal Tax Exempt Status	Latest Revision:	3/27/2020

GP-1.4 Nonprofit and Federal Tax Exempt Status

The Association has two forms of nonprofit corporation status. The first is its status under state nonprofit corporation law. The second is its tax status.

1.4.1 Nonprofit Status

Although the Association was founded in 1910, it incorporated on November 23, 1970, pursuant to the General Nonprofit Corporation Law of the State of California, as an instrumentality of political subdivisions of the State of California.

The Association operates as a mutual benefit corporation. *See* Cal. Corp. Code 7110, *et seq.* A mutual benefit corporation is organized for the benefit of its members and, while a mutual benefit corporation is subject to less extensive state regulations and supervision than a public benefit corporation, the California Nonprofit Mutual Benefit Corporation Law does require the Association to do the following:

- Keep up-to-date versions of its Articles of Incorporation and Bylaws, *see* Cal. Corp. Code § 7160;
- Keep: (1) adequate and correct books and records of account; (2) membership records, including the Association's members' names, addresses and membership class; and (3) minutes of the proceedings of the members, board, and board committees, *see* Cal. Corp. Code § 8320(a);
- Prepare an annual report within 120 days after the close of the Association's fiscal year containing in appropriate detail: (1) a balance sheet as of the end of the fiscal year, an income statement and a statement of cash flows for that fiscal year, accompanied by an independent accountant's report or, if none, by the certificate of an authorized officer of the Association that they were prepared without audit from the Association's books and records; (2) a statement of the place where the names and addresses of the current members are located; and (3) a statement briefly describing any transaction or indemnification of the following kinds: (A) unless approved by members under Corporations Code § 7233(a), any transaction: (i) to which the Association was a party; (ii) which involved more than \$50,000 or was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000; and (iii) in which an interested persons had a direct or indirect material financial interest; and (B) a brief description of the amounts and circumstances of any loans, guaranties, indemnifications, or advances aggregating more than \$10,000 paid during the fiscal year to any officer or director of the Association unless the loan, guaranty, indemnification, or advance has already been approved by the members under Corporations Code § 5034, or the loan or guaranty is not subject to Corporations Code § 7235(a). (*See* Cal. Corp. Code § 8321 and § 8322.) The report must be sent to all directors and to any member who requests a copy in writing; and

- Biennially file a form SI-100 with the Secretary of State, including (1) the names and addresses of its chief executive officer, secretary and chief financial officer; (2) the street address for the Association's principal office; and (3) the designation of an agent for service of process. *See*, Cal. Corp. Code § 8210(a)-(b).

1.4.2 Federal Tax-Exempt Status:

The Internal Revenue Service, in a private letter ruling dated October 30, 2007, determined that the Association is exempt from federal tax under Internal Revenue Code § 115. That section provides that gross income does not include income derived from the exercise of any essential governmental function and accruing to a state or political subdivision. (See 26 U.S.C. § 115. If an entity is established to perform a public or governmental function and it engages in an activity that furthers public or governmental interests, that entity will be deemed to be providing an "essential governmental function." By assisting local governments provide cost-effective acquisition, treatment, and distribution of water to inhabitants of California, the Association performs an "essential governmental function," thereby satisfying the first prong of § 115. The Association satisfies the second prong of § 115 because the income that it receives accrues to its members (local subdivisions of the State and agencies of State subdivisions), and not to private parties except incidentally.

References:

California Corporations Code; Internal Revenue Code § 115

Revision History:

Revision Date	Description of Changes	Requested By
9/25/2015	Initial Release	ACWA Staff and Governance Workgroup
3/27/2020	Policy GP-1.3 renumbered to GP-1.4 as a result of the addition of a new policy, Policy GP-1.3 Vision Statement	ACWA staff