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Section 501(c)(3) Organization Prohibited Political Activities

Political activities of charities and other types of exempt organizations frequently rise in prominence in presidential election years. Not only is the IRS sensitive to political activities in a presidential election year, private organizations frequently monitor election activities of charities and may report to the IRS violations of the political activity prohibition. Consequently, it is important for leaders of charities, and particularly religious organizations, to be familiar with the rules for participation in elections by exempt organizations.

Generally, organizations that are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the Code), are prohibited from directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office. A “candidate for public office” means any individual who offers himself or herself or is offered by any other person as a contestant for an elective public office, whether such office is national, state, or local. A section 501(c)(3) organization will be treated as participating in an election if its money or resources are used in the campaign or the organization shows a bias towards a specific candidate. A minister or rabbi speaking from the pulpit or otherwise in their religious capacity may not urge the congregation to support a political candidate. On the other hand, voter education activities performed in a nonpartisan manner, or the presentation of public forums or debates where all candidates have an opportunity to participate may not be treated as prohibited campaign participation.

For example, a section 501(c)(3) organization may set up a booth at a state fair where citizens can register to vote. The registration of voters may not be treated as participation in the election. On the other hand, an attempt to educate the public on environmental issues where a telephone bank is set up to register voters if they agree with the incumbent's position on environmental issues may be treated as participation in the political campaign.

In addition, private foundations are generally prohibited from making any expenditure to influence the outcome of an election or to carry on, directly or indirectly, any voter registration drive.

A section 501(c)(3) organization leader may participate in his or her personal capacity on behalf of a candidate. For example, lending the name of the CEO of a hospital to an advertisement that includes his title may be treated as a personal activity and not participation by the hospital in the election. On the other hand, presenting a statement of views on the election in a monthly alumni newsletter by the president of a university may be treated as campaign intervention.

Issue advocacy by a section 501(c)(3) organization is generally permitted as a form of education of the public. Advocacy issues may arise where a statement expresses approval or disapproval for one or more candidates' positions or actions on an issue. The determination of whether it becomes political intervention may depend on whether the statement is delivered close in time to the election and/or makes a reference to voting in the election. Generally, the IRS uses a "facts and circumstances" test to determine whether issue advocacy has become political campaign intervention by considering the context of the advocacy. In addition, a statement may identify a candidate not only by stating the candidate's name, but also by other means such as showing a picture of the candidate or other distinctions or features of a candidate's platform or biography.

Websites may also be a source of campaign intervention. An unbiased, nonpartisan voter guide, which includes a link to all of the candidates' websites may not be treated as intervention. Statements of a candidate's position on a policy issue should include statements by all of the candidates. However, a website hyperlink to one candidate's website may constitute impermissible support for the candidate.

Intervention in a political campaign may result in revocation of exempt status to a section 501(c)(3) organization. In addition, excise taxes equal to 10% of the amounts expended by the section 501(c)(3) organization may be imposed on the organization. Section 4955 also imposes a 2.5% excise tax on an organization manager who knowingly agrees to make the expenditure. If the expenditure is not corrected additional taxes of 100% and 50%, respectively, are imposed on the origination and manager, respectively.

In contrast to how the Code treats a section 501(c)(3) organization, the Code allows section 501(c)(4) organizations (social welfare entities) to engage in political activities. However, a section 501(c)(4) organization must be primarily engaged in promoting the common good and general welfare. Generally, it is believed that an organization will be deemed to be primarily engaged in common good and general welfare, if more than 50% of the expenditures of the organization are devoted to purposes other than election activities. Section 501(c)(4) organizations have become popular for political activities in recent years because they are not subject to disclosure rules that are applicable to political action committees under section 527. (Note, to the extent that the organization is seeking to influence a state or municipal election, the 501(c)(4) entity may be subject to local registration and disclosure obligations.) A section 501(c)(4) organizations is, however, subject to a tax equal to 21% of the lesser of (i) its expenditures for political activities or (ii) its net investment income.

Issues arise in the case of affiliations between section 501(c)(3) organizations and section 501(c)(4) organizations. Generally, the IRS will respect the separate corporate existence of a section 501(c)(4) subsidiary of a section 501(c)(3) organization or vice versa. However, it is important that the two organizations be separately organized and follow all corporate formalities. In addition, funding of the section 501(c)(4) organization by the section 501(c)(3) organization should not include funds used for political activities. While overlapping officers, directors, or employees are permitted, their time must be allocated between the organization and each should pay its share of the costs.

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