



Political Activities by Tax-Exempt Organizations

As we enter the home stretch to Election Day on Nov. 6, Internal Revenue Code (IRC) Section 501(c)(3) organizations will be speaking out on issues that are important to their charitable mission.

As part of this, however, 501(c)(3) organizations need to keep in mind that they are prohibited from engaging in any type of political campaign activities. In this article, we will discuss a brief background on the prohibition of political activities by 501(c)(3) organizations, prohibited political activities, penalties for being involved in prohibited political activities, permissible activities and things organizations can do to maintain compliance with the rules during the election process.

Background

Section 501(c)(3) of the Internal Revenue Code states organizations cannot "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Treasury Regulations Section 1.501(c)(3)-1(c)(3)(iii) states "the term 'candidate for public office' means an individual who offers himself, or is proposed by others, as a contestant for elective public office, whether such office be national, state or local." The prohibition regarding political activities applies to all types of private foundations and public charities including religious organizations.

The rules disallowing political campaign intervention were added to the Internal Revenue Code in 1954 as an amendment to the 1954 Revenue Act, sponsored by Sen. Lyndon Johnson. Sen. Johnson believed an opponent of his was using a 501(c)(3) organization to finance his campaign. Without these rules in place today, imagine how many campaigns and political organizations would form or use 501(c)(3) organizations to attract donations.

Prohibited Political Activities

The IRS has some excellent information and publications on its website regarding political campaign intervention by tax-exempt organizations, charities and churches with regard to politics, including questions and answers regarding prohibited and permissible activities. One of the best references can be found in IRS Revenue Ruling 2007-41 (<http://www.irs.gov/pub/irs-drop/rr-07-41.pdf>). In this ruling, the IRS lists examples of items that are permitted and not-permitted forms of campaign involvement. Here are some items that are not considered to be permitted or, in certain circumstances, can become prohibited political activities:

- Charitable organizations cannot publish statements endorsing or opposing candidates for public office on their social media sites, websites, via email or in any written materials. Organizations need to be careful to ensure that any links from the organization's website to other websites do not contain political campaign content at any time during which the link exists. The organization is

considered to be responsible for the linked content irrespective of whether it has control over the other organization.

- Speaking at official functions or forums of the organization as a candidate is permitted under certain conditions. It can occur as long as no campaign items and activities occur at the event, the organization does not support or oppose one candidate over another and no mention is made about the upcoming election. If the organization is sponsoring a debate or forum, all candidates for the same office must be given equal opportunity to attend. Questions must be addressed in a nonpartisan manner with unbiased wording and cover a large area of issues. The event must be conducted as an educational event to the public.
- Leaders of the organization cannot endorse candidates on behalf of the organization. They should not express any type of political views in a manner that could be linked back to the organization. Political statements should not be made at the organization's official events or in newsletters. Leaders of the organization can express their own political beliefs – just not in a situation where it could be linked back to the organization. In expressing their own political beliefs, leaders of the organization should clearly state that their views and comments are their own personal beliefs and are not intended to represent the views of the organization. Organizations should also be careful to educate their employees that any use of the organization's personnel or facilities for political activities could be attributed back to the organization and, therefore, are prohibited activities.
- Organizations need to be careful of the types of business activities they might be involved in with a candidate. The organization may be considered to be involved in political activity if it is providing services, goods, office space or loans to a candidate at different terms than it does to a member of the general public or to another candidate. For instance, if I rent office space to one candidate at a lower rate than another, my organization would then be considered to be involved in political campaign intervention. To be safe, if something is offered to one candidate, it should be offered to all candidates with the same terms.
- Organizations can speak out and take public policy positions on issues. However, if the issue comes out right before an election, candidates have a clear position on the issue and it differentiates them from each other, taking a position on the issue could be viewed as indirectly opposing or supporting a particular candidate for office. Even if the organization does not tell others to directly vote against or for a particular candidate, it could be considered political intervention if it is implied that they should vote for one candidate over another. For example, using code words, such as "pro-life, pro-choice, liberal, conservative, etc." instead of the candidate's name could be seen as endorsing one candidate over another.

Penalties for Involvement in Political Campaign Activities

Punishment for violation of the rules is severe. The IRS can revoke the tax-exempt status of the organization. In addition to the potential loss of exempt status, under IRC Section 4955, an organization that violates the rules can face a 10 percent excise tax on political expenditures incurred or paid. The excise tax on the political expenditures can increase to 100 percent if the expenditure is not corrected within a certain timeframe. An additional excise tax can also be imposed on any managers who knew about the expenditures.

Permitted Election Time Related Activities

So, what types of items are 501(c)(3) organizations allowed to participate in related to elections?

- Voter education activities conducted in a neutral and nonpartisan manner. Examples of this include publishing a compilation of voting records, voter guides or responses to candidate questionnaires where a wide range of activities are addressed and published results show no bias for or against any candidate.
- As discussed earlier, candidates speaking at forums, debates or meetings sponsored by the organization if they meet the criteria of being impartial, all candidates are invited to participate, and no bias is exhibited for or against any candidate.
- Voter registration and "get-out-the-vote" drives, provided that these drives are neutral, nonpartisan and not identified by the organization with any political party or candidate. However, private foundations need to be careful when it comes to this area. If a private foundation spends funds for a voter registration drive that does not meet the requirements under IRC Section 4945(f), it will be subject to tax.

Types of things you can do to keep your organizations compliant

Here are some suggested items to help keep your organization out of trouble during this election season:

- Monitor your social media sites, websites and links from your websites to other websites. Review content and links for any potential political materials as the underlying content changes.
- Prohibit the use of the organization's materials, supplies, resources, email and time by personnel for any type of political activity.
- Avoid political expenditures.
- Leaders of the organization who choose to write or speak about their own political views on their own time should clearly inform the audience that these are their own views and not those of the organization which they lead.
- If business is conducted with candidates, it should be done on the same terms with all of the candidates.
- Written policy and education for all employees regarding what is permitted and what is prohibited.
- Religious organizations should think very carefully about certain types of planned political activities. Known as Pulpit Freedom Sunday since 2008, ministers across the
- U.S. have been making political campaign statements endorsing political candidates from the pulpit. The participants send to the IRS DVDs of their sermons in order to get the IRS to act. Participants in this event are looking for this issue to be taken to court and viewed as a freedom of religion and speech issue versus a tax issue. The current silence of the IRS on this issue should not be taken as a sign that the IRS does not intend to investigate or enforce the rules regarding the prohibition of these types of activities by all 501(c)(3) organizations, including religious organizations, during this election cycle.
- Do not permit campaign signs on the organization's property.

- Set up a 501(c)(4) social welfare organization to conduct political activities.
- These organizations are allowed to conduct political activities to the extent that they are not its primary activity. The organization's primary activity must be the promotion of social welfare. However, given the recent activity regarding 501(c)(4)s by the IRS in this area, organizations should be very careful in setting up this type of entity.

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