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Guidance to Tax Exempt Organizations Involved in Political Activities

With the arrival of 2008, we have begun what promises to be a very interesting year in politics. With national campaigns for President and Congress due to take place in November, and with issues such as global warming, poverty, and various natural disasters in the forefront, tax-exempt organizations are more likely to seek involvement in the political process to further their charitable missions. In this environment, it is imperative for 501(c)(3) organizations to understand the limitations placed on them by the tax laws.

501(c)(3) prohibits any participation by exempt organizations in any political campaign on behalf of or in opposition to any candidate for public office. This means that no charitable assets may be used to help elect any candidate seeking an elective office on the local, state, or national level. The penalty for violating this rule in most cases is the loss of tax exempt status.

In June of this year, the IRS released Revenue Ruling 2007-41, which provides 21 factual situations that illustrate what tax-exempt organizations can and cannot do in terms of their political involvement. An overview of the types of activities covered by the Revenue Ruling are highlighted below.

Individual Political Activity by the Organization's Leaders

The political campaign intervention prohibition is not intended to restrict the free expression on political matters by leaders of organizations speaking for themselves as individuals about important issues of public policy. However, for their organizations to remain tax exempt under Section 501(c)(3), leaders cannot make partisan comments in any official organization publications or at official functions of the organization.

Candidate Appearances

An organization may invite a person who is a candidate for public office to come to its events and also to speak at its events without jeopardizing its tax exempt status. When a candidate is invited to speak at an organization event in his or her capacity as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- Whether the organization provides an equal speaking opportunity to opposing candidates;
- Whether the organization indicates its support of a candidate, for example in introductory remarks;
- Whether any political fundraising occurs at the event.

Issue Advocacy vs. Political Campaign Intervention

Section 501(c)(3) organizations may take positions on public policy issues but must avoid any issue advocacy that functions as political campaign intervention. IRS factors in determining whether issue advocacy has crossed the line and has become political campaign intervention include the following:

- Whether the statement identifies one or more candidates running for political office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions or actions;
- Whether the statement is delivered close to election day;
- Whether the statement makes reference to voting or an election.

A communication is particularly at risk of being deemed to be a political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before you can arrive at any conclusions.

Business Activity

The business activities of a 501(c)(3) organization (i.e. the acceptance of paid political advertising, leasing office space) can trigger penalties in this area as well. Some of the factors that the IRS considers in making such determinations are:

- Whether the goods or services provided are available to candidates in the same election on an equal basis;
- Whether fees charged to a candidate are offered at a discount.

Web Sites

A web site is a form of communication and a means of disseminating information. If an organization posts something on its web site that favors or opposes a candidate for public office, this will be treated the same as if the organization distributed printed material or oral broadcasts. When an organization establishes a link to another web site, the organization is responsible for the content on the linked site, even though it does not have control over such content. Political content on a web site and links to candidate-related material can result in penalties for violation of this rule.

If you have any questions about whether your organization is engaging in an activity that might violate the rules and limitations on political activities, you should consult an attorney who is qualified to provide the appropriate legal advice.

Tax Exempt Department

David G. Samuels
Dsamuels@dslp.com
(212) 692-5981

Daniel R. Alcott
Dalcott@dslp.com
(212) 692-5534

Please contact Caitlin Velez at (212) 672-3747 or newsletter@dslp.com with any questions or comments.

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