

Election Year Political Campaign Intervention for Charitable Organizations

Over the last few election cycles, there are a number of reported violations made by charitable organizations intervening in the political campaigns of persons running for elective office. There is a strict prohibition on this type of activity by charitable organizations, with revocation of tax exempt status the end game for the IRS.

With the upcoming election year close approaching, and what seems to be a presidential campaign that has been going on for years, this article reviews some of the most recent reports and guidance issued by IRS regarding allowable and prohibited political activity for charitable organizations.

2006 Political Activities Compliance Initiative

On February 22, 2006, the IRS issued its report on the Political Activities Compliance Initiative for election year 2004 (2004 PACI). The report noted that, in nearly three quarters of the cases reviewed, improper political intervention by section 501(c)(3) organizations was substantiated. In the face of such a high level of non-compliance, the IRS launched the Political Activities Compliance Initiative for election year 2006 (2006 PACI), which included expedited timeframes for classification and case assignment and established a group of referral classifiers dedicated to PACI cases, all directed at providing swift notice to organizations with the hope of stopping political intervention as quickly as possible. Some of the information compiled by the IRS included the following:

- In 2004, the IRS received 166 referrals alleging political campaign intervention by section 501(c)(3) organizations, resulting in 110 organizations selected for examination.
- In 2006, the number of referrals received increased to 237; but, the number of referrals selected for examination remained relatively consistent at 100.
- In both 2004 and 2006, referrals alleging violations by churches and non-churches were almost evenly split, as were the referrals ultimately selected for examination.
- Similar levels and types of allegations of prohibited political intervention occurred in both 2004 and 2006.
- The 2006 PACI-PC sub-project identified 269 apparent cases of direct contributions, totaling \$343,963, from section 501(c)(3) organizations to political candidates.
- Initial IRS contact in 2006 PACI-PC cases resulted in charities receiving over \$121,000 in refunds of political contributions.

Revenue Ruling 2007-41, 2007-25 I.R.B. (June 18, 2007)

In June of 2007, IRS issued Revenue Ruling 2007-41 in its attempt to provide a comprehensive review of allowable and disallowable political campaign activities of charitable organizations.

Organizations that are exempt from income tax under section 501(a) of the Internal Revenue Code as organizations described in section 501(c)(3) may not 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.

The Revenue Ruling provides 21 situations and holds as to whether or not the organization participated or intervened in a political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of section 501(c)(3).

Important to note is that any activity in this arena must be carefully reviewed based on all the facts and circumstances related to it. In addition, combining activities also must be reviewed in their totality as to how they interrelate in making any determinations in this area.

Topics Analyzed

The Revenue Ruling uses a topic approach in its analysis. The situations presented are diverse and appear to be comprehensive. However, each situation only looks at a single political activity in making its determination as to whether it is an allowable or disallowable activity. The topics covered include:

- Voter education, voter registration and get out the vote drives by section 501(c)(3)s
- Free expression on political matters by leaders of charitable organizations speaking as themselves as individuals,
- Candidate appearances,
- Issue advocacy vs. political campaign intervention,
- Business activity, and
- Website activity.

In 9 of the situations analyzed in the Revenue Ruling, the organization intervened in a political campaign within the meaning of section 501(c)(3). In the remaining 12 situations, the organization did not intervene in a political campaign within the meaning of section 501(c)(3).

Over the coming months additional articles regarding some of the above aspects in the political arena will be presented, including rules in the lobbying area. This area is a point of contention with the IRS and it does not take lightly any violations. Please call your nearest RSM McGladrey representative to assist your organization in planning and analyzing any anticipated political activities to ensure that your tax exempt status is not jeopardized by holding such an event.

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