

in the news

Nonprofit Organizations



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IRS Issues Proposed Regulations Regarding Section 501(c)(4) Organizations

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On November 26, 2013, the Department of Treasury and Internal Revenue Service (“IRS”) released proposed regulations regarding activities of Section 501(c)(4) social welfare organizations that will be treated as political activities. The proposed regulations would replace the current facts and circumstances approach of determining political activity with a bright-line definition. Simultaneously, the IRS requests comments on several matters, including what proportion of a Section 501(c)(4) organization’s activities must promote social welfare.

What You Need To Know

Background

Under the current Treasury regulations, which have not been amended since 1959, a Section 501(c)(4) organization must be “primarily” engaged in promoting the common good and general welfare of the community. The current Treasury regulations also state that engaging in political campaign activity does not promote social welfare. Accordingly, an organization that conducts political campaign activity as its primary purpose will not qualify as a Section 501(c)(4) social welfare organization. This IRS currently uses a facts and circumstances analysis to make this determination.



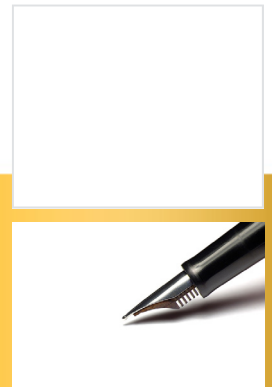
Proposed Regulations

The proposed regulations are designed to reduce the need to conduct fact-intensive inquiries by replacing this test with more definitive rules. These new rules center on the definition of “candidate-related political activity.” The proposed regulations state that the promotion of social welfare does not include direct or indirect candidate-related political activity. The proposed regulations define “campaign-related political activity” as:

1. Any communication expressing a view on, whether for or against, the selection, nomination, election, or appointment of one or more clearly identified candidates or of candidates of a political party;
2. Any public communication, within 30 days of a primary election or 60 days of a general election, that refers to one or more clearly identified candidates in that election or, in the case of a general election, refers to one or more political parties represented in that election;
3. Any communication the expenditures for which are reported to the Federal Election Commission, including independent expenditures and electioneering communications;
4. A contribution (including a grant, subscription, loan, advance, or deposit) of money or anything of value to or the solicitation of contributions on behalf of (a) any person, if the transfer is recognized under applicable federal, state, or local campaign finance law as a reportable contribution to a candidate for elective office; (b) any Section 527 organization; or (c) any other type of tax-exempt organization that engages in candidate-related political activity;
5. Conduct of a voter registration drive or get-out-the-vote drive;
6. Distribution of any material prepared by or on behalf of a candidate or by a Section 527 organization, including written materials and audio and video recordings;
7. Preparation or distribution of a voter guide that refers to one or more clearly identified candidates or, in the case of a general election, to one or more political parties (including material accompanying the voter guide); and
8. Hosting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in the election appear as part of the program.

As to the first three items, the communication must contain words that expressly advocate, such as *vote*, *oppose*, *support*, *elect*, *defeat*, or *reject*, or be “susceptible of no reasonable interpretation other than a call for or against” the selection, nomination, election, or appointment of one or more candidates or of candidates of a political party.

Activities conducted by an organization include activities paid for by the organization or conducted by a director, officer, or employee acting in that capacity or by volunteers acting under the organization’s direction or supervision.





Comments Solicited

Although it was expected, the proposed regulations do not address the question of how much political activity an organization may engage in and still qualify under Section 501(c)(4). The preamble to the proposed regulations indicates that the IRS is considering whether the current standard that a Section 501(c)(4) organization must be “primarily” engaged in social welfare activities should be retained, and, if so, whether it should be more precisely defined. The Treasury Department and the IRS are soliciting comments from the public as to the following:

- The proportion of an organization’s activities that must promote social welfare for an organization to qualify for tax exemption as a social welfare organization;
- Whether additional limits should be imposed on any or all activities that do not further social welfare;
- How to measure the activities of organizations seeking to qualify as exempt social welfare organizations;

- Whether the same or a similar approach, reflected in this proposal, should be adopted in addressing political activities of other types of tax-exempt (Section 501(c)) organizations, particularly charitable (Section 501(c)(3)) entities, labor organizations (Section 501(c)(5) entities), and business leagues (Section 501(c)(6) entities);
- Whether this same or similar approach should be used in defining exempt function activity of political organizations (Section 527 organizations).

What You Should Do Now

If your organization is a Section 501(c)(4) social welfare organization, you should be aware of the new proposed rules and determine how they may impact the measurement of your organization’s political activity for purposes of reporting requirements, the Section 527 tax and the primary purpose test. Other exempt organizations, including Sections 501(c)(3), 501(c)(5) and 501(c)(6) organizations also should take note as the rules potentially could reach these organizations. Finally, your organization may consider providing comments to the IRS regarding the proposed regulations, so that your concerns can be heard. ■





For More Information

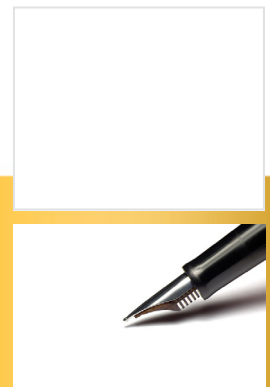


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