

Campaign Finance Alert: IRS Investigating Donations to 501(c)(4)

Posted by [Tammera R. Diehm](#) on May 26, 2011

On May 13, 2011, the Internal Revenue Service (IRS) confirmed that it is examining records of five taxpayers who have made donations to one or more 501(c)(4) social welfare organizations to determine whether the donations are subject to the federal gift tax. News of the investigation has caused concern among social welfare organizations and their donors across the country as the outcome of the review could have a significant impact on them.

What is the gift tax?

The gift tax is a tax imposed at a current, maximum rate of 35% on all gifts above a certain threshold level. The IRS defines "gift" broadly to include the transfer of any property (including money) for less than fair value. The tax must be paid by the donor, not the recipient. Historically, the gift tax has been used in coordination with the estate tax so that taxpayers cannot avoid paying estate tax by simply gifting their wealth before they die, but the IRS has taken the position that the gift tax applies to a much broader category of transfers. The Internal Revenue Code specifically exempts certain transfers from the gift tax, including contributions to 501(c)(3) organizations and to Section 527 political organizations.

Political Motivation?

The IRS has denied that the investigation is anything other than routine. However, some believe that it may be a response to increased political spending by 501(c)(4) entities over the past year. In January 2010, in *Citizen's United v. Federal Election Commission*, the United States Supreme Court ruled that corporate independent expenditures to support or oppose candidates for political office are protected by the First Amendment. As a result of this ruling, the 2010 election cycle saw increased spending by corporate entities, including significant political spending by 501(c)(4) corporations that received contributions from individual and other corporate donors. Unlike 527 organizations, 501(c)(4) organizations do not need to publicly disclose their donors.

What is the scope of review?

In a written statement, the IRS indicated that its examination is limited to only five taxpayers and that it is not undertaking a broader effort to investigate donations to all 501(c)(4) organizations. Some, however, are skeptical. In late 2010, the IRS exempt organizations unit released a work plan for the current fiscal year. The plan indicated that the IRS had previously focused primarily on activities of 501(c)(3) entities but that the unit would begin an in-depth examination of

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501(c)(4), (5) and (6) organizations. The plan specifically cited a review of political activities and compliance issues

Additional information

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