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POLITICAL ACTIVITY BY SECTION 501(c)(3) ORGANIZATIONS: FEDERAL INCOME TAX LAW RESTRICTIONS

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A. Introduction

1. For Section 501(c)(3) organizations, supporting or opposing the election of a candidate for public office at the federal, state, or local level is strictly prohibited and is cause for loss of tax-exempt status. Prohibited activities include endorsement, cash or in-kind contributions (including publicity, staff time, and use of facilities or assets such as photocopiers) to candidates or political parties, working for or against a candidate, rating or evaluating candidates, and coordinating activities with organizations having political aims (such as campaign committees, PACs, and Section 501(c)(4) organizations).
2. A Section 501(c)(3) organization cannot set up, fund, or manage a Political Action Committee (PAC). PACs are special funds set up under Section 527. PACs that support federal candidates are subject to federal campaign finance rules and Federal Election Commission oversight.
3. A Section 501(c)(3) organization can engage in certain voter education activities without loss of tax-exempt status. Special, additional restrictions apply to private foundations (not discussed here).

B. Permissible Voter Education Activities – An Overview

1. Individuals can participate in a political campaign on their own time and not as spokespersons for an organization or while using its resources.
2. An organization can inform candidates of its positions on issues and urge candidates to go on record in support of these positions, as long as the organization offers to inform all candidates running for a particular office. Candidates may distribute their responses. An organization may not publish or distribute candidate statements to the media, the general public, or its members until after the election, except as nonpartisan “questionnaires” or as bona fide news reports.

3. An organization can distribute candidate responses to questionnaires only when (a) the organization has a broad range of concerns, (b) the questions cover a broad range of subjects, are framed without bias, and are given to all candidates for office, and (c) the results are distributed only through the organization's routine channels. An organization and questionnaire with a narrow focus might be seen as endorsing candidates whose replies are favorable to the questions posed. See Rev. Rul. 78-248, 1978-1 C.B. 154, Situations 2 and 3.
4. An organization can distribute candidate voting records as part of its normal distribution of the voting records of all legislators if such distribution is also done at non-election times and not only when a campaign is underway. An organization that does not publish voting records throughout the year must wait until after the election to publish a recap of the legislative votes throughout the legislative session. See Rev. Rul. 78-248, 1978-1 C.B. 154, Situations 1 and 4; Rev. Rul. 80-282, 1980-2 C.B. 178.
5. An organization may sponsor meetings or public forums and invite candidates if "all serious candidates" are invited, whether or not all such candidates attend, and as long as the organization does not state its views or comment on the views of the candidates. Each candidate should be given an equal opportunity to answer questions. The organization may publish in its newsletter as news items the remarks by candidates, as long as the newsletter is regularly published and its circulation is limited to the organization's normal distribution. See Rev. Rul. 86-95, 1986-2 C.B. 73.
6. An organization may sell, trade, or rent its membership list to candidates, as long as the organization offers all candidates the same opportunity. The organization must be paid fair market value in return.
7. An organization can conduct nonpartisan voter registration and get-out-the-vote efforts. The special standards of Section 4945(f) are applicable to organizations that utilize private foundation funds for these activities. A voter participation program is "nonpartisan" even though it is aimed at certain blocs in the community, such as minorities or low-income groups, despite a statistical likelihood that members of the group will vote disproportionately for candidates of a certain party.
8. An organization may invite political candidates to speak in a non-candidate capacity, for example, a candidate who is also an expert in a non-political field or who is a celebrity. The organization must ensure that the person speaks only in a non-candidate capacity, with no mention of the candidacy or the election. In such circumstances, it is not necessary for the organization to provide equal access to all political candidates.

9. An organization may continue its normal public education programs during an election campaign period, even if the issues it addresses are controversial. An organization may also use the heightened level of voter awareness during an election campaign to inject its issues into the campaign debate, with the aim of increasing public support for its positions. The organization's focus must be on promoting its views on the issues and not on promoting candidates who agree with these views. An organization can engage in direct or grass roots lobbying of legislators involved in a re-election campaign, but these activities may be scrutinized. An organization should have a history of such lobbying and its communications should address proposed legislation. See Rev. Rul. 66-256, 1966-2 C.B. 210.

C. Definitions

1. A "candidate" is any person who becomes or is proposed by others as a contestant for elective public office. To be a candidate, a person need not promote the candidacy, have an organized campaign, or be nominated by a political party. A judicial nominee is a candidate if the office is elective rather than appointive. See Reg. 1.501(c)(3) – 1(c)(3)(iii); Rev. Rul. 67-71, 1967-1 C.B. 125; Notice 88-76, 1988-27 I.R.B. 34.
2. "Public office" includes committees of a political party if the candidates appear on the general election ballot.
3. A prohibited "endorsement" can be implicit, that is, even though no candidate or party is mentioned by name. An endorsement is also implied when an organization publishes the endorsement of others.
4. An organization impermissibly "intervenes" in a political campaign by urging a person or persons to run for office, whether or not someone acts on that urging.

D. Sanctions

1. In addition to revocation of its tax-exemption, an organization may be subject to a 10% excise tax on each political expenditure. See Section 4955.
2. An organization's managers may be personally subject to a 2.5% excise tax on each political expenditure to which they agree knowingly and without reasonable cause. See Section 4955.
3. The IRS may make an immediate assessment of tax for a flagrant violation of the prohibition against political expenditures, and may seek an injunction to bar political expenditures if an organization when so notified does not immediately cease making such expenditures. See Sections 6852 and 7409.

4. A Section 501(c)(3) organization that loses tax-exemption due to its political activity cannot qualify as a Section 501(c)(4) organization. See Section 504.

E. Section 501(c)(4) Affiliate

1. A Section 501(c)(4) organization can engage in political activity as long as electioneering is not its principal activity. A 501(c)(3) organization can create a controlled 501(c)(4) organization that engages in electioneering activity, if a clear separation between the organizations is observed and the 501(c)(4)'s political activities are wholly financed with nondeductible contributions to it. The 501(c)(3) cannot subsidize the 501(c)(4)'s political activities or coordinate its activities with the political activities of the 501(c)(4).
2. It is permissible to have overlapping officers and directors between a 501(c)(3) and 501(c)(4).
3. A Section 501(c)(4) organization can form a PAC. An affiliated 501(c)(3) organization should avoid identifying itself with the PAC, for example, by not permitting a PAC to use a name similar to the name of the 501(c)(3), and by not sharing any facilities with the PAC. It is best to avoid overlapping officers and directors between a 501(c)(3) and a PAC.