

Business and Tax Team

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AALRR Alert



Guidance on Political Activities for Nonprofit Organizations

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With an election year upon us, it is prudent for nonprofit organizations to review the Internal Revenue Service (“IRS”) rules relating to political activities, such as lobbying to influence legislation and endorsing specific candidates. An organization may desire to spend funds to oppose or support certain ballot measures and/or employees of an organization may want to “help the cause” by taking action on behalf of the organization; however, participation in some political activities can jeopardize an organization’s tax-exempt status.

Certain political activities or expenditures may not be prohibited depending on the facts and circumstances (see the discussion on “general advocacy” below), while other political activities are absolutely prohibited and can result in the revocation of an organization’s tax-exempt status.

Candidate Electioneering

Activities that are aimed to influence the outcome of a candidate’s election for public office are considered “candidate electioneering.” All nonprofit 501(c)(3) public charities

are **absolutely prohibited** from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. In addition to the more obvious action of making contributions to political campaign funds, this prohibition includes making public statements (verbal or written) on behalf of the organization in favor of or in opposition to any candidate for public office. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Lobbying

Activities that attempt to influence legislation are considered “lobbying.” An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of specific ballot measures. In general, a section 501(c)(3) organization cannot attempt to influence legislation as a substantial

part of its activities. While it may engage in some lobbying activities as long as such activities further the organization’s exempt purpose, too much lobbying activity risks loss of tax-exempt status.

General Advocacy

Voter Education and Registration Activities

Certain voter education activities conducted in a non-partisan manner (including presenting public forums and publishing voter education guides) do not constitute prohibited political campaign activity. Organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner

--> “A 501(c)(3) organization may take positions on public policy issues, even if the issues divide candidates in an election for public office, as long as the message does not in any way favor or oppose a candidate.”

without jeopardizing their tax-exempt status. In addition, activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, if conducted in a non-partisan manner, would not be prohibited political campaign activity.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another, (b) oppose a candidate in some manner, or (c) have the effect of favoring a candidate or group of candidates, would constitute prohibited candidate electioneering.

Candidate Appearances

If a candidate is invited to speak at an organization's event in his or her capacity as a political candidate, the organization must take steps to ensure that (a) it provides an equal opportunity to participate to all political candidates seeking the same office; (b) it does not indicate any support for or opposition to any candidate (including during candidate introductions and in communications concerning any candidate's attendance); and (c) no political fundraising occurs. If planning an event at which a political candidate will appear, a 501(c)(3) organization should carefully review the IRS rules, because the IRS looks at a number of factors in determining whether candidate appearances are permissible activities.

A candidate may choose to attend an event that is open to the public, such as a lecture, concert, or worship service. The candidate's presence at an organization-sponsored event does not, *by itself*, cause the organization to be engaged in prohibited political campaign activity. However, if the candidate is publicly recognized by the organization at the event or is invited to speak, it may cause the organization to be engaged in prohibited political campaign activity.

Support for Issues

A 501(c)(3) organization may take positions on public policy issues, even if the issues divide candidates in an election for public office, as long as the message does not in any way favor or oppose a candidate. Be aware that a message that shows a picture of a candidate, refers to a candidate's political party affiliations, or contains other distinctive features of a candidate's platform or biography, *even without identifying the candidate by name*, may be prohibited political campaign activity.

Cautions Regarding Website Posts and Links

If an organization posts something on its website that favors or opposes a candidate for public office, it is engaging in prohibited political campaign activity. In addition, if an organization establishes a link to another website, it is responsible for the consequences of establishing and maintaining that link, even if

the organization does not have control over the content of the linked site. Because the linked content may change, it is critical that the organization monitor the linked content and adjust or remove any links that could result in prohibited political campaign activity.

Need More Information?

If your organization is considering engaging in political activities this election year, and if you would like further information about whether such activities are permissible or prohibited, please contact the attorneys listed above.