

ISSUE

Are proceeds received by a political organization from sales of art reproductions 'exempt function income' within the meaning of section 527(c) of the Internal Revenue Code of 1954?

FACTS

An organization that qualifies as a political organization under section 527(e)(1) of the Code and files its returns on a calendar year basis solicited a well-known artist to produce a work of art to be reproduced for sale by the organization to raise funds. The artist produced an original work, the subject of which was not of a political nature, and donated it to the organization. The organization contracted with a local gallery, for a fee, to have the work reproduced and to sell the reproductions at the gallery over a period of several months. At the end of this period, the gallery turned over the proceeds from the sales, less the negotiated fee, to the organization.

The sole purpose of the sales was to raise funds for the operation of the organization. The sales were not undertaken to encourage support (aside from financial) for the organization or for any individual seeking political office.

LAW AND ANALYSIS

Section 527(c)(1) of the Code excludes 'exempt function income' from the taxable income of a political organization.

Section 527(c)(3) of the Code provides that the term 'exempt function income' means any amount segregated for exempt function use that is received as (A) a contribution of money or other property, (B) membership dues, a membership fee or assessment from a member of the political organization, (C) proceeds from a political fund raising or entertainment event, or proceeds from the sale of political campaign materials, that are not received in the ordinary course of any trade or business, or (D) proceeds from the conducting of any bingo game (as defined in section 513(f)(2)).

In discussing the taxation of political organizations, the Senate Finance Committee stated that political organizations are not to be taxed on proceeds received from political fund raising or political entertainment events, or proceeds from the sale of political campaign materials which are not received in the ordinary course of any trade or business. Thus, proceeds received from casual sporadic fund raising events or political entertainment events, such as an annual political dinner or an annual athletic exhibition, are to be treated as exempt function income. Similar fund raising events would include political breakfasts, receptions, picnics, dances, etc. However, in all of

these cases the income would be exempt function income only if the event is a political event and is not carried on in the ordinary course of a trade or business. Factors to be taken into account in determining whether an activity is a trade or business, for purposes of this section, are to include the frequency of the event, the manner in which the event is conducted, and the span of time over which the event is carried on. Whether an event is a political fund raiser or a political entertainment event will depend upon the facts and circumstances of the particular event, taking into account the extent to which the event is related to a political activity aside from the need of the organization for income or funds. S. Rep. No. 1357, 93rd Cong., 2d Sess. 1, 28 (1974), 1975-1 C.B. 517, 533.

In this case, the sales of the reproductions were made solely for fund raising purposes, and, thus, were not related to a political activity aside from the need of the political organization to raise funds. In addition, the sales occurred over a period of several months. Therefore, the proceeds from the sales (1) were not received from a specific political fund raising event or activity, and (2) were received in the ordinary course of a trade or business. Also, the sales were not sales of political campaign materials, since the art work was not of a political nature.

HOLDING

Proceeds received by the political organization from the sales of art reproductions are not 'exempt function income' within the meaning of section 527(c)(3)(C) of the Code.