

Rules for Exempt Organizations During an Election Year

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Types of Exempt Organizations that May Engage in Advocacy Activities:

- § 501(c)(3) Charitable Organizations
 - § 501(c)(4) Social Welfare Organizations
 - § 501(c)(5) Labor Organizations
 - § 501(c)(6) Business Leagues
 - § 527 Political Organizations
- Other types of exempt organizations may engage in advocacy but these are the most common ones.

§501(c)(3) Status: Charitable Organizations

An organization must be *organized* and *operated* exclusively for an *exempt purpose*—*charitable, religious, educational, scientific, etc.*

§ 501(c)(4) Status: Social Welfare Organizations

An organization must be *organized* as a non-profit and *operated* exclusively for the *promotion of social welfare--promoting the common good and general welfare of the people in the community*

§ 501(c)(5) Status:

Labor, Agricultural & Horticultural Organizations

An organization must be *operated* for the betterment of conditions of those engaged in their pursuits and their earnings may not inure to the benefit of any member

§ 501(c)(6) Status: Business Leagues

Organizations that are associations of persons with a common business interest which promote the common interest and do not conduct a regular trade or business for profit

§ 527 Status: Political Organizations

An organization that is *organized* and *operated* primarily for the purpose of directly or indirectly accepting contributions or making expenditures to influence the selection, nomination, election or appointment of any individual to Federal, State, or local public office, office in political party, or Presidential electors

Political Campaign Activity

Any activities that favor or oppose candidates for public office, including:

- Endorsements of candidates
- Contributions
 - To candidates
 - To PACs
- Public statements for/against a particular candidate
- Distributing materials prepared by self or others that favor or oppose candidates

All *facts and circumstances* will be considered

Lobbying

Attempting to influence legislation through:

- Directly contacting members of a legislative body
- Encouraging the public to contact members of a legislative body
- Advocating a position on a public referendum

General Advocacy

- Influence public opinion on issues
- Influence non-legislative governing bodies (the executive branch, regulators)
- Encourage voter participation:
 - Voter Registration
 - Get Out the Vote Drives
 - Voter Guides
 - Candidate Debates

Advocacy and § 501(c)(3) Status

- **Political Campaign Activity** – Absolutely prohibited
- **Lobbying** – Cannot be a substantial activity of the organization
- **General Advocacy** – Permitted as an educational activity

Advocacy and § 501(c)(4), (c)(5), or (c)(6) Status

- **Political Campaign Activity** – Permitted so long as it does not constitute the organization's primary activity
- **Lobbying** – Unlimited amount of lobbying in furtherance of its exempt purpose permitted
- **General Advocacy** – Unlimited amount in furtherance of exempt purpose

Advocacy and § 527 Status

- **Political Campaign Activity** – Permitted as exempt activity
- **Lobbying** – Limited amount permitted provided not substantial
- **General Advocacy** – Limited amount permitted provided not substantial

§ 501(c)(3) and Elections

- *Participating in, or intervening in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office – Absolutely prohibited*
- *Advocating for or against ballot initiatives – May not be more than insubstantial activity*
- *Encouraging people to participate in the electoral process in non-biased, neutral manner – § 501(c)(3) purpose*

IRS Activity

- Political Activities Compliance Initiative (PACI)
 - “Fast Track” evaluation of allegations
 - Review of public campaign disclosures
- Guidance
 - Fact Sheet 2006-17 (plain language)
 - Revenue Ruling 2007-41 (precedential)
- 2008 Program Letter

Possible Tax Consequences

- Tax under § 4955 on political campaign expenditures
- Tax under § 4911 or § 4912 on excess lobbying expenditures
- Possible revocation of exempt status if intervene in political campaign or more than insubstantial lobbying

§ 501(c)(4), (c)(5), or (c)(6) Status

- Primary activity must be in furtherance of exempt purpose
- May engage in non-exempt purpose activities without jeopardizing exemption provided less than primary activity
- Lobbying may be exempt purpose activity
- Political campaign activity is not exempt purpose activity

Possible Tax Consequences

- Tax under § 527(f) on political campaign expenditures
- Proxy tax under § 6033(e) on lobbying and political campaign expenditures
- Possible revocation -- if political campaign and other non-exempt activity amounts to primary activity

Form 990

- Annual Information Return
 - Unless excepted, § 501(c) organizations must file Form 990, Form 990-EZ or Form 990-N
 - Certain § 527 organizations file Form 990 or Form 990-EZ
 - Due 15th day of 5th month (May 15 for calendar year) (6 month extension may be granted)
- Publicly Disclosed
 - Organizations required to make available
 - Available from IRS
- New Schedule C for 2008 return consolidates reporting of political and lobbying activity

| | 501(c)(3) | 501(c)(4) | 501(c)(5) | 501(c)(6) | 527 |
|--|-----------|-----------|-----------|-----------|-----|
| Receive Tax-Deductible Charitable Contributions | YES | NO | NO | NO | NO |
| May Receive Contributions or Fees Deductible as a Business Expense | YES | YES | YES | YES | NO |
| Substantially Related Income Exempt from Federal Income Tax | YES | YES | YES | YES | YES |
| Investment Income Exempt from Federal Income Tax | YES | YES | YES | YES | NO |
| Engage in Legislative Advocacy | LTD | YES | YES | YES | LTD |
| Engage in Candidate Election Advocacy | NO | LTD | LTD | LTD | YES |
| Engage in Public Advocacy Not Related to Legislation or Election of Candidates | YES | YES | YES | YES | LTD |

For More Information

IRS Charities & Nonprofits Website:

www.irs.gov/eo

Subscribe to EO Update – link at bottom of page

IRS Political Organization Website:

www.irs.gov/polorgs

TE/GE Customer Account Services:

(877) 829-5500 (toll-free)

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