



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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Legend:

FPAC =  
SPAC =  
Organization =  
Tax-Exempt Subsidiaries =  
State =

Dear

This is in reply to your ruling requests dated September 23, 2005 and November 20, 2008, from your authorized representatives, regarding the establishment and operation of a Political Action Committee by you and certain non-profit subsidiary corporations and for-profit subsidiary corporations.

**FACTS**

You are a comprehensive, regional, integrated health care system, incorporated under the non-profit laws of State. Your network offers a full range of health care services in southeast State, including diagnosis, treatment, research, education, medical equipment, and home health care. You have more than \*\*\*\*\* employees. You are either the sole member or holder of all issued and outstanding shares of stock of your Tax-Exempt Subsidiaries.

You are recognized as exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code and are classified as a public charity under §§ 509(a)(1) and 170(b)(1)(A)(iii).

Your bylaws provide that all rights, powers, duties, and responsibilities relative to the management and control of your property, business, and affairs are vested in the board of trustees. Your day-to-day affairs are managed by your president and other officers.

You conduct an insubstantial amount of lobbying through your government affairs department with the mission of participating in state and federal "legislative and regulatory advocacy designed to maintain and improve quality and cost-effective health care services" provided by you and your affiliates throughout State. Neither you nor your Tax-Exempt Subsidiaries participate or intervene

in political campaigns on behalf of any candidates for public office.

Organization will be formed as a separate non-profit membership corporation without capital stock, the primary purpose of which will be to carry out the mission of your government affairs department described above. Organization will operate independently of you and your Tax-Exempt Subsidiaries. Organization will have two classes of membership: voting and non-voting. You will be Organization's sole voting member with the power to elect the board of directors and approve the budget. Your Tax-Exempt Subsidiaries will be the non-voting members of Organization. All members will pay nominal membership dues to Organization.

Organization will have eleven members of its board of directors, including its president, secretary, and treasurer. The board shall have general supervision and control over the affairs and funds of Organization. A majority of Organization's board will consist of members of your, or Tax-Exempt Subsidiaries', board of directors, officers, or employees. Your treasurer or assistant treasurer will serve as Organization's treasurer.

You will allocate the cost of any shared or leased employees, goods, services, or facilities between Organization and you or Tax-Exempt Subsidiaries. The fair value of shared or leased employees, goods, services, or facilities will be reimbursed to the entity incurring the direct cost.

Organization will apply for exempt status as a social welfare organization under § 501(c)(4), but the determination as to whether Organization qualifies as a social welfare organization is not the subject of this ruling.

Following the establishment of Organization, an incidental part of its activities will be the establishment of two political action committees under § 527. One political action committee will be SPAC and the other will be FPAC, referred to jointly as "PAC."

Prior to conducting any activities, SPAC's and FPAC's initial boards and officers will be appointed by the chairperson of Organization. A majority of both the SPAC's board of directors and the FPAC's board of directors will consist of members of the board of directors of Organization. The treasurer of Organization will serve as treasurer of SPAC and the treasurer of FPAC. The SPAC board shall have sole and exclusive general supervision and control over the affairs and funds of SPAC, and the FPAC board shall have sole and exclusive general supervision and control over the affairs and funds of the FPAC. The SPAC board shall determine the policies and procedures for collection and payment of funds to the candidates and political committees that SPAC shall support and the amount of all budgeted allocations for expenditures by the SPAC. The FPAC board shall determine the policies and procedures for collection and payment of funds to the candidates and political committees that FPAC shall support and the amount of all budgeted allocations for expenditures by FPAC.

Organization and PAC will operate independently of each other and administer separate and apart from you and your Tax-Exempt Subsidiaries. No assets or funds of yours or your Tax-Exempt Subsidiaries' will be used for establishment, administration, or solicitations of contributions to PAC. Neither you nor Tax-Exempt Subsidiaries will make contributions to PAC. Organization and PAC will maintain separate bank accounts, books, records, and prepare separate financial statements, reports, and tax returns. Any leasing or sharing of employees, goods, services, or facilities between you or Tax-Exempt Subsidiaries with Organization or PAC will be conducted at arm's

length and there will be a reasonable allocation of costs. Organization and PAC will each have a separate letterhead, address, telephone number, and Internet address.

Solicitations for contributions to PAC will be made by PAC. There will be no joint fundraising, postal, or electronic mailings or events conducted between PAC and you or Tax-Exempt Subsidiaries. PAC will not solicit any contributions or transact any other business using your or Tax-Exempt Subsidiaries' names and will not use mailings signed by your or Tax-Exempt Subsidiaries' employee, officer, director, or trustee in an official capacity. Neither you nor Tax-Exempt Subsidiaries will distribute any material produced or prepared by PAC. Neither you nor Tax-Exempt Subsidiaries will provide mailing lists to PAC without making them available to other § 527 organizations on an equal basis.

You and your Tax-Exempt Subsidiaries will offer a payroll deduction plan to your employees, pursuant to which they can elect to have a voluntary contribution to any § 527 political organization, deducted automatically and forwarded to that organization. You and your Tax-Exempt Subsidiaries have made a payroll deduction plan available to employees for a variety of payments, including contributions by an employee to § 501(c)(3) charitable organizations. To date, you have not allowed a payroll deduction in connection with contributions to § 527 organizations.

No political organization will solicit payroll deductions using your or Tax-Exempt Subsidiaries' facilities or postal or electronic mailings. You and Tax-Exempt Subsidiaries will not distribute any publication, mass media advertisement, or programs encouraging payroll deduction to any political organization. All employees will be required to voluntarily consent in writing to the payroll deduction. All transfers of employee payroll deductions to political organizations will be made promptly upon receipt by you or Tax-Exempt subsidiaries.

### **RULINGS REQUESTED**

You have requested the following rulings:

1. That your establishment and operation of PAC does not constitute participation or intervention in a political campaign and will not result in your losing tax-exempt status under § 501(c)(3).
2. That your establishment and operation of a voluntary payroll deduction plan for your and Tax-Exempt Subsidiaries' employees, to allow contributions to be made to any § 527 political organization, does not constitute intervention in a political campaign and will not result in your losing tax-exempt status under § 501(c)(3).

### **LAW**

Section 501(a) provides for the exemption from federal income tax of organizations described in §§ 501(c)(3) and 501(c)(4).

Section 501(c)(3) provides, in part, for the exemption of organizations that are organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the

activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 501(c)(4)(A) describes civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 527(e)(1) defines "political organization" as "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function."

Section 527(e)(2) defines "exempt function" as "the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under §162(a)" of the Code.

Section 527(f)(1) provides that, if an organization described in § 501(c) expends any amount during the taxable year directly (or through another organization) for an exempt function under § 527(e)(2), then, notwithstanding any other provision of law, there shall be included in the gross income of such organization for the taxable year, and subject to tax, an amount equal to the lesser of the net investment income of such organization for the taxable year or the aggregate amount so expended during the taxable year for such an exempt function.

Treas. Reg. § 1.501(c)(3)-1(c)(3)(i) provides that an "action" organization described in §1.501(c)(3)-1(c)(3)(iii) is not described in § 501(c)(3) of the Code.

Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) provides that an organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii) provides that the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.

Treas. Reg. § 1.527-6(g) provides that § 527(f) and this section do not sanction the intervention in any political campaign by an organization described in § 501(c) of the Code if such activity is inconsistent with its exempt status under § 501(c). For example, an organization described in § 501(c)(3) is precluded from engaging in any political campaign activities. The fact that § 527 imposes a tax on the exempt function (as defined in §1.527-2(c) of the regulations) expenditures of

§ 501(c) organizations and permits such organizations to establish separate segregated funds to engage in campaign activities does not sanction the participation in these activities by § 501(c)(3) organizations.

Rev. Rul. 62-156, 1962-2 C.B. 47 considers whether the administration and operation of a payroll deduction plan necessarily involves use of the employer's resources and assets, as a determinable cost to the employer. In that case, an employer incurred certain costs involved in promoting the involvement of its employees in the political process. Advertisements encouraging persons to vote were published, employees were given time off with pay to vote, and a payroll deduction plan allowing contributions to any political entity was established. In ruling that these expenditures were deductible as ordinary and necessary business expenses, the Service recognized that the expenses related to the employee programs were justified in that, among other things they improved employee morale and enhanced the reputation of the employer.

Rev. Rul. 2004-6, 2004-4 I.R.B. 328, states that an organization exempt from federal income tax under § 501(a) as an organization described in § 501(c) that, consistent with its tax-exempt status, wishes to engage in an exempt function within the meaning of § 527(e)(2) may do so with its own funds or by setting up a separate segregated fund under § 527(f)(3).

In Moline Properties, Inc. v. Commissioner, 319 U.S. 436 (1943), the Court recognized that each corporation is a separate taxable entity for federal income tax purposes if the corporation is formed for valid business purposes, and is not a sham, an agency, or instrumentality.

In Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983), the Court held that the § 501(c)(3) prohibition on substantial lobbying was constitutional, but noted that the organization could have used a dual structure with a § 501(c)(4) organization for lobbying and a § 501(c)(3) organization for other activities. The Court notes that the two groups must be separately incorporated and keep adequate records to show that tax-deductible contributions are not used to pay for lobbying.

In Branch Ministries v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000), the court affirmed the revocation of a church's exempt status under § 501(c)(3) of the Code. In holding that the § 501(c)(3) prohibition on political campaign activity did not violate the organization's constitutional rights, the court agreed with Branch Ministries' assertion that the church could not set up a political action committee, but stated that there were other methods to achieve the political communication goals of the church that were not supported by tax-deductible contributions.

## **ANALYSIS**

1. As an organization described in § 501(c)(3), you are prohibited from participating or intervening in, directly or indirectly, any political campaign on behalf of or in opposition to any candidate for public office. See Treas. Reg. § 1.501(c)(3)-1(c)(3). An organization recognized as exempt under § 501(c)(3) may not establish a § 527 organization to engage in political campaign activity. See, e.g., Treas. Reg. § 1.527-6(g); Branch Ministries v. Rossotti, supra. Under the circumstances described, however, the establishment and operation of PAC will not constitute political intervention.

An exempt organization under § 501(c)(3) may establish and control a § 501(c)(4) organization to

conduct certain activities allowable under § 501(c)(4), but not allowable under § 501(c)(3). The organizations must be separately incorporated and keep adequate records to show that tax-deductible contributions are not used to pay for non-exempt purposes under § 501(c)(3), including lobbying. See, e.g., Moline Properties, Inc., supra; Taxation with Representation of Washington, supra. An organization recognized under § 501(c)(4) may conduct political campaign activities and may establish a political organization described in § 527(e), as long as political campaign activity is not the primary activity of the § 501(c)(4) organization. Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

You will form Organization as a separate nonprofit membership corporation under the laws of State, solely owned by you and your Tax-Exempt Subsidiaries.

Assuming that Organization qualifies as a social welfare organization under § 501(c)(4) because its establishment of PAC will be less than its primary activity, and that each organization will operate independently of each other and administer its own affairs separately, Organization's establishment of PAC will not be attributable to you, and therefore will not constitute participation or intervention in, directly or indirectly, any political campaign on behalf of or in opposition to any candidate for public office by you. See Moline Properties, Inc., supra.

2. Your activity of establishing and operating a voluntary payroll deduction plan for your and Tax-Exempt Subsidiaries' employees to contribute to any § 527 political organization is similar to that described in Rev. Rul. 62-156, supra, in which the recipient political action committees were of the employees' choosing. Under the circumstances described, your establishment and operation of a voluntary payroll deduction plan for employees will not constitute intervention in a political campaign by you.

The prohibition on political campaign activity applies only to § 501(c)(3) organizations, not to the activities of individuals in their private capacity. You will not select the beneficiary political organizations and you have no influence over the chosen organizations. Therefore, we find that any political intervention that occurs as a result of the voluntary payroll deduction is not attributable to you, but rather is attributable to the employees in their personal capacities.

## **RULINGS**

Accordingly, we rule as follows:

1. Your establishment and operation of PAC does not constitute participation or intervention in a political campaign and will not result in your losing tax-exempt status under § 501(c)(3).
2. Your establishment and operation of a voluntary payroll deduction plan for employees, to allow contributions to be made to any § 527 political organization, does not constitute an intervention in a political campaign and will not result in your losing tax-exempt status under § 501(c)(3) of the Code.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Any changes that may have a bearing upon your tax status should be reported to the Service. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records. Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provision of the Code.

This ruling will be made available for public inspection under § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Danny Smith  
Acting Manager  
Exempt Organizations  
Technical Group 1

Enclosure  
Notice 437