



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: 201403019
Release Date: 1/17/2014
Date: October 24, 2013

Uniform Issue List Numbers:

501.04-00
501.04-03

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(4). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Karen Schiller
Acting Director, Exempt Organizations
Rulings and Agreements



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: August 29, 2013

Contact Person:

Identification Number:

Uniform Issue List Numbers:

501.04-00

501.04-03

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND

Date =
State =
Year1 =
Description1 =
Description2 =
Description3 =
Description4 =
Description5 =
X =
Year2 =

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code § 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under § 501(c)(4). The basis for our conclusion is set forth below.

FACTS

You were incorporated on Date, in State. You state that you are a research and advocacy organization committed to educating the citizens of your state about the impact and/or opportunity of important public policy issues. In particular, you plan to focus on issues that you believe are extremely significant but have not garnered the level of public attention or debate you think is appropriate. You seek to facilitate education and outreach to elected officials, opinion leaders, and other community stakeholders to elevate these issues in the public discourse.

You state that one of your primary activities is the promotion and advocacy of open debate on contemporary federal and state public policy issues. Specifically, you state that your staff will undertake short- and long-term projects to initiate an honest and open public policy debate among the general public concerning a particular issue of importance to you. This activity

involves the participation of your staff in the public debate on this issue, as well as efforts to petition state leaders, Congress, and the executive branch. You state that this activity accounts for about 49% of your time.

You state that you devote another 49% of your time to public education through mass media communication, such as your website. Your website is primarily devoted to raising funds for political advertisements.

Your "Donate Now" webpage states,

[Description1]
donations

The webpage goes on to state that
[Description2]

Your website states that you are
provides the following:

Your "Take Action Now!" webpage

- 1.
- 2.
- 3.
- 4.
- 5.

- Description3.
- Description2.
- Description4.
- Description 5.
- Description1 candidates.

Description2, Description3, Description4, and Description5 all reflect your position on your primary issue, Description1.

You state that you spend about 2% of your time locating and appealing to new contributors.

In Year1, one week before the election, you sent out a flier to educate the public. The flier was in opposition to a candidate in that election. One side of the flier has a statement criticizing the candidate with respect to your primary issue, Description1. The other side of the flier states, "This Tuesday, remember [Description1]" The candidate is a member of the U.S. House of Representatives and was running for reelection in Year1 in or near the same district in which you are located. You stated that you spent approximately \$17x producing and disseminating this flier.

In the updated financial data for the three years you provided, you state that you had revenue in Year1 and Year2, the two federal election years, but you had no revenue in the non-federal election year. In Year1, you had revenue of approximately \$28x. You expended approximately \$17x on the flier previously described, approximately \$6x on a script and development of a television advertisement that did not air, and approximately \$5x on legal, accounting, and administrative costs. In Year2, you had revenue of approximately \$18x, of which you spent approximately \$15x on compensation to one of your directors.

LAW

Section 501(c)(4) of the Internal Revenue Code provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

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

Rev. Rul. 68-656, 1968-2 C.B. 216, concluded that an organization that informs the public on controversial subjects and attempts to influence legislation germane to its program may qualify for exemption under § 501(c)(4). The organization sought changes in the law and educated the public about a currently illegal activity by circulating printed material and legislative proposals.

Rev. Rul. 2004-6, 2004-1 C.B. 328, analyzes six situations to determine whether the organization described in each has expended funds for a § 527(e)(2) exempt function as a result of an advocacy communication on a public policy issue. A § 527(e)(2) exempt function means 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. All the facts and circumstances must be considered when making this determination. Factors that tend to show that an advocacy communication on a public policy issue is for a § 527(e)(2) exempt function include, but are not limited to, the following:

- The communication identifies a candidate for public office
- The timing of the communication coincides with an electoral campaign
- The communication targets voters in a particular election
- The communication identifies that candidate's position on the public policy issue that is the subject of the communication
- The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue

Factors that tend to show that an advocacy communication on a public policy issue is not for a § 527(e)(2) exempt function include, but are not limited to, the following:

- The absence of any one or more of the factors listed above
- The communication identifies specific legislation, or a specific event outside the control of the organization that the organization hopes to influence

- The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication)
- The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation)
- The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication

Rev. Rul. 2007-41, 2007-1 C.B. 1421, analyzes 21 situations to determine whether the organization described in each has directly or indirectly participated in a political campaign on behalf of or in opposition to a candidate for public office. All facts and circumstances are considered when making this determination. When determining whether a communication results in political campaign intervention, key factors include:

- Whether the statement identifies one or more candidates for a given public office
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions
- Whether the statement is delivered close in time to the election
- Whether the statement makes reference to voting or an election
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office

ANALYSIS

Based on our analysis of the information you submitted with your application, we have determined that you are not operated exclusively for the promotion of social welfare within the meaning of § 501(c)(4) because you are not primarily engaged in activities that promote social welfare. Therefore, you do not qualify as an organization described in § 501(c)(4).

Section 1.501(c)(4)-1(a)(2) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. You have not established that you are primarily engaged in promoting the common good and general welfare of the people of the community.

You stated that your activities would primarily consist of the promotion and advocacy of open debate on contemporary federal and state public policy issues and public education through mass media communication, such as your website. You have not provided information regarding such activities and how they would further social welfare purposes. Rather, the

information provided about your activities indicates that you do not further social welfare purposes.

In Year1, you spent approximately 60% of your revenue on the production and distribution on a flier that encouraged the defeat of a candidate for public office. Your activities are unlike the organization in Rev. Rul. 68-656, supra, because your materials are accompanied by the identification of a candidate for public office and discourage the public from voting for that particular candidate. Your production and distribution of the flier has multiple factors that are indicative of participation or intervention in political campaigns as described in Rev. Rul. 2004-6, supra and Rev. Rul. 2007-41, supra: the flier identified a candidate for public office; the timing of the communication coincided with an electoral campaign; the flier referred to the election day; and the flier identified the candidate's position on the public policy issue. Your production and distribution of the flier constituted direct political campaign intervention in opposition of a candidate for public office.

Your website is devoted to raising money for political advertisements to help elect members to Congress that share your values. This is political campaign intervention and does not further social welfare purposes.

You have not provided information to show that the development of the unaired television advertisements furthered social welfare purposes.

In Year2, you spent 87.2% of your revenue compensating one of your directors for his efforts coordinating your activities, website, fundraising, and placement of public materials concerning your mission from Year1 to Year2. From the information you submitted with your application, your activities were the production and distribution of the flier described above, the operation of your website—both of which are political campaign intervention—and the creation of the unaired television advertisement, which you did not establish furthered social welfare purposes. Therefore, the compensation of your director for these activities does not further social welfare purposes.

CONCLUSION

In summary, you are not operated primarily to promote social welfare because you have not established that your primary activities promote social welfare. Accordingly, you do not qualify for exemption as an organization described in § 501(c)(4) and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to this address:

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Karen Schiller
Acting Director
EO Rulings and Agreements