

Internal Revenue Service
Appeals Office

Department of the Treasury

Employer Identification Number:

Person to Contact:

Number: **201424028**
Release Date: 6/13/2014

Employee ID Number:
Tel:
Fax:

Date: March 19, 2014

Tax Period(s) Ended:

UIL: 501.04-00
501.04-03

Dear

We considered your appeal of the adverse action proposed by the Director, Exempt Organizations, Rulings and Agreements. Our final determination is you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in section 501(c)(4) of the Code.

Our adverse determination was made for the following reason(s):

You are not primarily operated for the promotion of social welfare of the people of the community because your primary activities are the participation in a political campaign on behalf of or in opposition to a candidate for public office.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate IRS service center according to the return's instructions. For further instructions, forms, and information visit www.irs.gov.

Include your employer identification number on all returns you file and in all correspondence with IRS.

This letter and the proposed adverse determination letter will be available for public inspection under Code section 6110 after deleting certain identifying information. We sent you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate Service (TAS) is an independent organization within the IRS. TAS helps taxpayers whose problems with the IRS are causing financial difficulties, who have tried but have not been able to resolve their problems with the IRS, and those who believe an IRS system or procedure is not working as it should. If you believe you are eligible for TAS assistance, call 1-877-777-4778, or for individuals who are deaf, hard of hearing, or have a speech disability, call TTY/TDD 1-800-829-4059. For more information, go to www.irs.gov/advocate. TAS assistance isn't a substitute for established IRS procedures, such as formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have any questions about this letter, please contact the person listed at the top of this letter.

Thank you for your cooperation.

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892 and/or 556



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: May 7, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

B = Date
C = State
D = Political Party
E = Year 1
F = Year 3
G = Officeholder
H = Office

x = dollar amount
y = dollar amount

UIL:

501.04-00
501.04-03

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided in connection with your application and in your Form 990 for the year E, we have concluded that you do not qualify for exemption under section 501(c)(4). The basis for our conclusion is set forth below.

Issue:

Do you qualify for exemption under section 501(c)(4) of the Internal Revenue Code? No, for the reasons stated below.

Facts:

You incorporated on B in the state of C. Your Articles of Incorporation and Bylaws state that you are organized and operated exclusively for section 501(c)(4) purposes. They also state that your specific purposes are to "educate the general public on issues of public concern, including climate change, health care, food policy, and other such issues."

Your activities consist of producing and disseminating radio, television and print advertisements, polling and public opinion research, producing and disseminating white papers, and meeting

with interested business and civic leaders in C. You posted many of your advertisements and white papers on your website.

You provided a "complete list of media buys" with the dates you ran the advertisements, a description of the advertisements and the cost of each one. You ran all advertisements statewide in E, including three television, one radio and one print in the period leading up to the primary election. You also ran one television and two radio advertisements in the period leading up to the general election. Furthermore, following the general election, you ran two print advertisements. About 85 percent of the expenses for these media buys were incurred for advertisements run during the periods leading up to the primary and general elections.

You submitted the content of 11 advertisements.

- Four of these advertisements (two radio and two print) include express statements to vote for G, e.g., "vote for G" and "C needs to...re-elect G."
- Two advertisements (one television and one radio) identified the G, expressed approval for the G's actions (e.g., "G who...protects our way of life"), and indicated that outsiders who controlled G's primary opponent were trying to defeat G. You ran the advertisements before the general election.
- One television advertisement identified one of the candidates for public office and his position on an issue. The advertisement also told viewers to call that candidate and express opposition to his position on that issue; however, the candidate was not a government official in a position to vote on that issue. You aired the advertisement shortly before the primary election.
- Two print advertisements addressed public policy issues. One discussed the impact of federal regulatory actions on C's industries. The other discussed the impact of tax cuts on the C's economy. Both advertisements instructed readers to call their congressman about these issues. You ran the advertisements after the general election.
- We were unable to view two of the television advertisements. You aired one of the advertisements before the primary election, and you aired the other before the general election. You identified the advertisement you aired before the general election as an "independent expenditure" on your "complete list of media buys." You described your "independent expenditures" as expenditures for "direct and indirect political activities" on Schedule C of Form 990.

In response to our question about your expenses for radio and television time to educate residents on key issues facing C, you responded that you spent more than x dollars on media buys and media production in the year E. You reported a nearly identical amount on your Form 990 for E for "Education-Media" and "Education-Production," which comprised 85 percent of your total Program Service Expenses for E. According to Form 990 instructions, "Program services are mainly those activities that further the organization's exempt purposes." They do not include Management and General Expenses or Fundraising Expenses.

In Part IV of Form 990 for E, you indicated that you had engaged in direct or indirect campaign activities on behalf or in opposition to candidates for public office. On Schedule C, *Political and Campaign Lobbying Activities*, you reported that you spent y dollars on these activities in E, which you described as "independent expenditures in support of candidate G. These

independent expenditures included radio, television, and print advertisements which were designed to educate the citizens of C on where G stood on important social welfare issues." These "independent expenditures" of y dollars comprised more than half of your total Program Service Expenses for E.

You stated that you intend to conduct polling and public opinion research and have conducted one poll. You contracted with a polling firm to survey registered likely D primary voters about issues pertinent to C voters, such as agriculture policy, unions and social security issues. You provided the telephone script used for the survey. The script includes questions as to whether the respondent is a registered voter, which primary the respondent is planning to vote in, and how likely the respondent is to vote in the upcoming D primary. According to the script, you will terminate the survey if the respondent is not a registered voter or if the respondent does not plan to vote in the D primary.

The survey asked the respondent to rate the performance of the United States, Congress, the President and the current D, H for C. It asks whether the respondent is likely to vote to re-elect the current H or to vote for one of the primary challengers.

The survey asks the respondent to rate statements "some people have given for supporting a candidate in the D Primary." The survey included one statement about the primary challenger without any opinion expressed. The survey included two statements about G, e.g., "G...voted against...the cap and trade bill..." and each included a favorable opinion, i.e., "we need G in Washington in order to protect C," and "G had the courage to put the people of C before the D."

The survey also asks the respondent to rate statements "some people have given for opposing a candidate in the D Primary." It includes seven statements about the challenger and two statements about G. Statements about the challenger explain that elected officials who have worked with the challenger are supporting G, that special interests are funding the challenger's campaign, and that the challenger has been involved in sending U.S. jobs overseas. Statements about the G explain that G is against reform and unions, and does not support the President.

You held meetings in years E through F where your directors met with agriculture and business leaders to discuss issues, such as gaming legislation, climate change, tax reform, immigration policy and health care implementation. You did not devote any monetary resources to these discussions that your board members conducted.

Finally, you produced four white papers on the following topics: climate change, tax policy, agriculture policy and regulatory policy. None of the white papers is more than one page. Each describes an issue and states your position. The white paper on agricultural policy states that you oppose policies that will drive agricultural production overseas. The white paper on climate change describes criticisms of the cap and trade legislation. You posted these documents on your website and e-mailed them to a distribution list drawn from your directors' personal and professional contact lists. Such lists include members of the C legislature, civic leaders, business executives and federal elected officials.

Law:

Section 501(c)(4) of the 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) of the Income Tax 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. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. In addition, the regulations provide 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. 68-45, 1968-1 C.B. 259, explains that all facts and circumstances are taken into account in determining an organization's primary activity under section 501(c)(4). The organization's activities included the following: veteran's programs; assistance to needy veterans, widows and orphans; patriotic programs; and community welfare programs, such as providing and furnishing playgrounds for children and sports programs for teenagers. The organization also conducted bingo games for the general public, and the resulting income was its principal source of revenue. The IRS held that the fact that the bingo games generated its principal source of income did not mean that the games were its primary activity. Taking into account all facts and circumstances, the IRS found that the organization's social welfare activities were its primary activities.

In Rev. Rul. 67-368, 1967-2 C.B. 194, the IRS held that an organization, which was formed to promote an enlightened electorate and whose primary activity was rating candidates for public office, was not exempt under section 501(c)(4) because it did not promote social welfare. The ruling stated that the comparative rating of candidates, even on a non-partisan basis, constitutes the participation or intervention on behalf of candidates favorably rated and in opposition to those less favorably rated.

In Rev. Rul. 81-95, 1981-1 C.B. 332, the IRS considered the effect of engaging in political campaign activities on a section 501(c)(4) organization. The ruling refers to five revenue rulings for other examples of what constitutes participation or intervention in political campaigns. Each of those rulings involves a section 501(c)(3) organization. The organization was primarily engaged in activities designed to promote social welfare. In addition, it conducted activities involving participation and intervention in political campaigns on behalf of or in opposition to candidates for nomination or election to public office. The ruling concluded that, because the organization's primary activities promoted social welfare, its lawful participation or intervention in political campaigns on behalf of or in opposition to candidates for public office would not adversely affect its exempt status under section 501(c)(4).

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 section 527(e)(2) exempt function as a

result of an advocacy communication on a public policy issue. A section 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 section 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; and
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

In facts and circumstances, such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is not for a section 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); and
- The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

Each of the situations assumes that:

- All payments for the described activity are from the general treasury of the organization rather than from a separate segregated fund under section 527(f)(3);
- The organization would continue to be exempt under section 501(a), even if the described activity is not a section 501(c) exempt activity, because the organization's primary activities are described in the appropriate subparagraph of section 501(c); and
- All advocacy communications described also include a solicitation of contributions to the organization.

Rev. Rul. 2007-41, 2007-1 C.B. 1421, analyzes 21 situations to determine whether the

section 501(c)(3) 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; and
- 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.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Additionally, the ruling states that section 501(c)(3) organizations are permitted to conduct certain voter education activities if they are carried out in a non-partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is political campaign intervention.

Finally, the ruling states that a web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

Application of Law:

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. Treas. Reg. §1.501(c)(4)-1(a)(2)(i). Whether an organization's primary activities are social welfare activities is determined based on all of the facts and circumstances. Rev. Rul. 68-45. The promotion of social welfare does not include direct or indirect participation or intervention in a political campaign on behalf of or in opposition to any candidate for public office. Treas. Reg. §1.501(c)(4)-1(a)(2)(ii). All the facts and circumstances (including the specific factors described in Revenue Rulings 2004-6 and 2007-41) are considered when determining whether an organization claiming exemption under section 501(c)(4) has engaged in direct or indirect participation or intervention in a political campaign on behalf of or in opposition to any candidate for public office. See Rev. Rul. 81-95 (citing section 501(c)(3) rulings as examples of political campaign intervention for section 501(c)(4) purposes)

You produced and disseminated advertisements, conducted polling, met with interested business and civic leaders, and disseminated white papers.

Advertisements

According to your reporting on Form 990 and representations on your application for exemption, your advertisement expenses comprised a majority of your Program Services Expenses. You described your expenditures for political campaign activities reported on Form 990 Schedule C, *Political and Campaign Lobbying Activities*, as expenses for "radio, television and print advertisements." You aired most of your advertisements, which you produced and distributed through television, radio, print, and the Internet, during an election campaign. The advertisements that we viewed identified candidates and made positive or negative statements about candidates for public office. These advertisements were not part of an ongoing series of substantially similar advocacy communications on the same issue. Some advertisements contained express statements to vote for a specific candidate. All of these advertisements constitute direct or indirect participation or intervention in a political campaign on behalf of or in opposition to any candidate for public office.

You aired the two television advertisements we were unable to view in the periods leading up to the primary and general elections. You identified one of these advertisements as an "independent expenditure" in your application materials and you reported your independent expenditures as expenditures for "direct and indirect political activities" and "independent expenditures in support of G" on Schedule C of Form 990. We cannot conclude that these two advertisements promoted social welfare within the meaning of section 501(c)(4).

Polling

You stated that you were conducting public opinion polling about issues pertinent to C voters, such as agriculture policy, unions and social security issues. Your poll included questions on these and other issues. You framed many questions in terms of statements that support or oppose a candidate. The poll included more statements to support G than to support G's challenger and many more reasons to oppose the challenger than to oppose G. The balance of positive and negative messages resulted in a poll that was biased in favor of G. Considering all the facts and circumstances, we have concluded that your polling activities support or oppose the election of a candidate for public office.

Meetings

The limited information you submitted regarding your meetings with various agriculture and business leaders does not establish that these activities promoted social welfare. By your description, these activities constituted a small portion of your time and resources.

White papers

The white papers you provided are no more than one page. Of those four white papers, your paper on cap and trade policy corresponds to one of the statements given for supporting G in

your public opinion poll. Your paper against driving agricultural production overseas corresponds to one of the reasons given for opposing G's challenger in your public opinion poll. You did not provide information as to when you disseminated these papers to your limited distribution list or when you posted them on your website. We cannot conclude that producing these white papers and posting them on your website promoted social welfare within the meaning of section 501(c)(4).

Conclusion:

Based on our analysis of the information you provided in connection with your application and in your Form 990 for the year E, we have determined that you are not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4). Accordingly, you are not exempt under section 501(c)(4) of the Code.

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 that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Types of information that should be included in your protest can be found on page 1 of Publication 892, under the heading "Filing a Protest". Your protest statement must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed 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 relevant facts, and such facts are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, 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 to you. That letter will provide information about filing tax returns and other matters.

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

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 892