

Internal Revenue Service
Appeals Office

Department of the Treasury

Employer Identification Number:

Date: FEB 20 2020

Person to Contact:

Number: 202022009
Release Date: 5/29/2020

Employee ID Number:
Tel:
Fax:

UIL Codes: 501.04.00
501.04-03

Certified Mail

Dear Sir or Madam:

This is a final adverse determination that 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.

We made the adverse determination for the following reason(s):

Your organization is not operated exclusively for the promotion of social welfare. The organization's primary activity is making political expenditures in support or in opposition of candidates running for elected office.

You're required to file Federal income tax returns on Form 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please 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.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in either:

- United States Tax Court,
- The United States Court of Federal Claims,
- The United States District Court for the District of Columbia.

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW

Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeals an IRS Determination on Tax -Exempt Status, for more information about the Appeals process.

You also have the right to contact the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You If you qualify for TAS assistance, which is always free. TAX will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS 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, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosure: Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

FEB 20 2020

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code § 501(a). Based on the information provided in connection with your application, 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 incorporated on Date1, in State1. Your Articles of Incorporation state that you are organized and operated exclusively for the promotion of social welfare, including your mission to promote and defend the causes that recognize the

You state on your Form 1024 that you will conduct two activities: public education and outreach and grant making. Public education and outreach programs, which you initially indicated would comprise 90% of your time, are intended to inform the general public about current issues that may impact them and to promote non-partisan causes that will help

You plan to publish information in print, on the Internet, and through e-mail distributions. To ensure that you effectively identify new issues and legislation that could impact your ideals, you state that you will monitor legislation, court decisions, administrative orders, and executive actions on an on-going basis. You plan to send public officials letters and issue press releases to educate and advocate your position. In order to help inform and educate the public in a more comprehensive and effective manner, you plan to utilize direct mail as well as television and radio advertisements to advocate your positions on issues and legislation.

According to your Form 1024, in order to further your goal of _____, you may also make grants to state or local organizations and other exempt organizations to increase the advocacy and legislative involvement work on behalf of such policies. You indicate this will comprise 10% of your time.

In your letter dated Date2, you indicated that you have focused on issues of government accountability and transparency, health care, and economic issues at both the federal and state level. You state you have used mail, television, and the Internet to communicate your message and you intend to continue to use these mediums to further your mission. You state you have engaged in grassroots lobbying by encouraging citizens to contact elected representatives and policy leaders who are in a position to affect government policy and the current public policy debate.

You do not have employees. Rather, you compensate vendors for various services including fundraising, polling, research, legal and accounting services, and producing and distributing direct mail, Internet, and television communications.

You indicate that you began directly or indirectly participating or intervening in a political campaign on behalf of or in opposition to a political candidate on Date3. Specifically, you state that you have engaged in "political intervention" activities that you state have largely consisted of direct mail and television advertising advocating your support of candidates that you believe will further your mission if elected to public office, as well as your opposition to candidates you believe will not. You state that political campaign activities constitute less than one-third of your expenditures, and in no event shall political intervention exceed 40% of your total activities.

Excluding the amounts you paid vendors for fundraising, legal services, and administrative support, you reported approximately \$x1 in expenditures in Year, as of Date2, and projected to incur another \$x2 of such expenditures (hereinafter referred to as "direct expenditures") by the end of Year. Substantially all (more than 90%) of your direct expenditures and more than three-quarters of your total expenditures in Year were for producing and distributing printed communications and television advertisements.

Television Advertisements

You submitted television advertisements that you aired in Year. You reported of your Year television advertisements to the Federal Election Commission (FEC) as independent expenditures¹ (enclosed²). These television advertisements criticized Candidate1, who, early in Year, had officially announced his intention to challenge incumbent Candidate2 to be the State2 Party nominee for U.S. Senate. The advertisements criticized Candidate1's voting record as a and questioned his suitability to serve as a U.S. Senator.

You reported another of your Year television advertisements to the FEC as an electioneering communication because the advertisement aired within 30 days of the State2 Party convention on Date4, where candidates could win the Party nomination for U.S. Senate outright with a sufficient percentage of the delegate vote.³ This television advertisement expressed concerns about the and praised Candidate2 for authoring the Bill to address this issue. No vote on the Bill was scheduled around the time the advertisement aired. Rather, the Bill had been introduced early in the previous year and referred to a committee, with no further action taken. In addition, while you provided a few mailers that criticized the without also praising Candidate2 for trying to address it, you did not provide any communications that urged support for the Bill or addressed the issue of produced or distributed after the Date5, State2 primary election. Finally, Candidate1, as well as other outside groups, had been criticizing Candidate2 for contributing to the and Candidate1 raised it as an issue distinguishing himself from Candidate2.⁴

Yet another of your Year television advertisements began with a few sentences criticizing the Legislation, which had been passed several years earlier, and concluded by praising Candidate2 for "

The advertisement mentions that Candidate2 had sponsored a bill to repeal the Legislation. However, no vote on that bill was scheduled around the time the advertisement aired; rather, the bill was introduced early in the previous year and then placed on the Senate Legislative

¹ An independent expenditure is an expenditure made for a communication "expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents." 11 C.F.R. § 100.16(a).

² Because we have provided a copy of this information to you, it will be available for public inspection as part of your exemption application if you are ultimately recognized as tax-exempt.

³ The term "electioneering communication" generally means any broadcast, cable, or satellite communication that (1) refers to a clearly identified candidate for federal office; (2) is made within 60 days before a general, special, or runoff election for the office sought by the candidate or 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and (3) in the case of a communication that refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate. 2 U.S.C. § 434(f)(3)(A).

⁴ See enclosure. See also Citation (enclosed). Because we have provided a copy of this information to you, it will be available for public inspection as part of your exemption application if you are ultimately recognized as tax-exempt.

Calendar, with no further action taken. In addition, while you did provide other communications (including television advertisement, which was the of your Year television advertisements that you submitted) that criticized the Legislation without also praising Candidate2 for trying to repeal it, you did not provide any communications you produced or distributed after the Date5, primary election that addressed the Legislation or efforts to repeal it. Finally, Candidate1 criticized Candidate2 for laying the groundwork (both through past legislation and foundational arguments) for the passage of the Legislation and thereby raised it as issue distinguishing himself from Candidate2.⁵

Direct Mail Communications

You provided a total of direct mail communications ("mailers") that you paid for, of which expressed disapproval for Candidate1 and of which expressed approval for Candidate2. Based on the information you provided regarding your expenditures, it appears that almost all of the mailers you provided were produced and distributed in Year—in the months leading up to the Date4, nominating convention and the Date5, primary election.

Of the mailers that expressed disapproval of Candidate1, you reported at least to the FEC as independent expenditures. One such mailer criticized Candidate1 for being a " as a state legislator and concluded that State2 " Candidate1. A second mailer criticized Candidate1 for and urged the reader to "Vote NO on [Candidate1]." A third mailer criticized Candidate1's voting record on a variety of issues and stated "

Of the remaining mailers that expressed disapproval of Candidate1, one criticized Candidate1 for Description1 and concluded that Candidate1 was a " but State2 ' "6 The other criticized Candidate1 for Description2.

None of the mailers expressing disapproval for Candidate1 urged either Candidate1 or the reader to take any action with respect to the issues identified.

As indicated above, you also distributed mailers that expressed approval of Candidate2. One communication praised Candidate2 for being a " As examples of Candidate2's " the mailer commended Candidate2 for stopping " (including by authoring the Bill), eliminating regulations that " " and fighting the government's Description3 (including by co-sponsoring a bill to repeal the Legislation). The mailer asked the reader to call Candidate2 to " Another mailer praised Candidate2 for " but did not urge any action with respect to the Legislation. A third mailer praised Candidate2 for " " for not " and for his efforts to fight and repeal the Legislation. The mailer urged the reader to call Candidate2 to

⁵ See enclosure.

⁶ This mailer, as well as the mailer described above that criticized Candidate1 for being a " , also criticized Candidate3. Candidate3 was another State2 who had announced he would challenge Candidate2 for the State2 Party nomination for U.S. Senate.

.” However, as noted above, no vote on repealing the Legislation was scheduled in the U.S. Senate at the time, and the timing of the mailer and identification of Candidate2 do not appear to be related to any other non-electoral event. In addition, you have not provided any communications that you distributed after the Date5, primary election that advocated for the repeal of the Legislation.

You also provided mailers that do not identify Candidate1, Candidate2, or any other candidate for public office. of these mailers criticized federal and state government actions on various issues and urged viewers to contact their legislators to take action on the issues. The other urged readers to vote for “[Descriptive] values” in the upcoming Date5, primary election.

Other Expenditures

In addition to your expenditures on television advertisements and mailers, you also reported paying vendors for “conducting research,” “conducting polling,” “producing internet communications,” and “providing photograph rights.” You have not provided sufficient information about these expenditures to determine whether or not the associated activities promote social welfare within the meaning of § 501(c)(4). However, these expenditures constituted only about 6 to 7% of your direct expenditures in Year and 5 to 6% of your total expenditures in Year.

You further state that “Internet Activities have comprised less than 5% of [y]our activities” as of Date2, and that you spent about \$x3 on the Internet, expenditures that presumably overlap with the amounts paid to vendors for “producing internet communications.” Much of the content on your website consists of the television and printed communications described above. In addition, you provided a web banner advertisement that appeared on your website that praised Candidate2 for “.” The web banner advertisement commends Candidate2 for a Descriptive votes; for being named by another organization as a Senator; for authoring the Bill; and for co-sponsoring a bill to repeal the Legislation. The advertisement does not urge any action with respect to either the Bill or the Legislation.

Finally, you reported paying vendors for fundraising, legal services, and administrative support. Together, these expenditures accounted for about 14% of your actual total expenditures in Year as of Date2, and about 19% of your total expenditures that you projected for Year.

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 § 501(c)(4) is one that 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, states that “[a]ll facts and circumstances are taken into account in determining an organization’s primary activity” for purposes of determining whether an organization primarily engages in activities which promote in some way the common good and general welfare of the people of the community.

Rev. Rul. 67-368, 1967-2 C.B. 194, 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 § 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.

Rev. Rul. 81-95, 1981-1 C.B. 332, considered the effect of engaging in political campaign activities on a § 501(c)(4) organization. The ruling refers to five revenue rulings, including Rev. Rul. 78-248, for other examples of what constitutes participation or intervention in political campaigns. Each of those rulings involves a § 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 § 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 § 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; 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 § 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.

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

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) and the regulations thereunder. Therefore, you do not qualify for exemption from federal income tax as an organization described in § 501(c)(4).

of your Year television advertisements and of your Year mailers expressed disapproval of Candidate1 or approval of Candidate2 and were distributed in the months leading up to the Date4, nominating convention and the Date5, primary election in which these candidates were competing against one another for the nomination.

You reported television advertisements and mailers expressing disapproval of Candidate1 to the FEC as independent expenditures. These communications, as well as the additional mailers expressing disapproval of Candidate1 that you apparently did not report to the FEC as independent expenditures, criticized Candidate1 for a variety of aspects of his record as a . These television advertisements and mailers made no attempt to advocate action on particular issues but rather focused on criticizing Candidate1, with a number of the communications concluding that Candidate1 was not suited to serve as a U.S. Senator and/or expressly stating "Vote NO on [Candidate1]." Accordingly, all of the television advertisements and all of the mailers expressing disapproval of Candidate1 constituted political campaign intervention.

The Year television advertisements and mailers expressing approval of Candidate2 praised Candidate2's past efforts related to addressing the national debt and repealing the Legislation. While these communications mentioned bills that Candidate2 had authored or sponsored, there was no vote scheduled on either bill; indeed, no action had been taken on either bill since they had been introduced more than a year before the advertisements aired. In addition, you did not provide us with any communications on either the particular bills or the general issues they addressed that you produced or distributed after the Date5, primary election. Moreover, Candidate1 had raised both the national debt and the Legislation as issues distinguishing him from Candidate 2.

Accordingly, based on all of the facts and circumstances, we conclude that the television advertisements and mailers that express approval for Candidate2 also constituted political campaign intervention.⁷

Although we requested the amount you spent on each television advertisement and mailer (as

⁷ You aired television advertisement praising Candidate2 for his efforts related to the that was very similar to the television advertisement you aired in the 30 days prior to the Date4, nominating convention. However, this advertisement appeared to have aired not in Year but in the previous year. A print-out of the webpage showing the date this advertisement was posted is enclosed. Because we have provided a copy of this information to you, it will be available for public inspection as part of your exemption application if you are ultimately recognized as tax-exempt. If this television advertisement aired only in the previous year, it is not part of the analysis of the relative proportion of your activities in Year. If it aired in Year, all of the factors set forth in the paragraph accompanying this footnote would apply and the advertisement would constitute political campaign intervention.

well as the specific dates during which these communications were distributed), you did not provide this information. However, it can be estimated from the information you did provide that your television advertisements and mailers that constitute political campaign intervention accounted for about 60% of all of your Year direct expenditures. By contrast, the Year television advertisement and Year mailers that did not express either disapproval for Candidate1 or approval for Candidate2 accounted for about 30% of all of your Year direct expenditures.

In addition to your expenditures on television advertisements and mailers, you also reported paying vendors for "conducting research," "conducting polling," "producing internet communications," and "providing photograph rights." You have not provided sufficient information about these expenditures to determine whether or not the associated activities promote social welfare within the meaning of § 501(c)(4), and, in any event, these expenditures constituted only about 6 to 7% of your direct expenditures in Year and 5 to 6% of your total expenditures in Year.

Your expenditures not included in Year direct expenditures—the amounts you paid independent contractors to perform fundraising, legal, and administrative support services—accounted for about 14% of your actual total expenditures in Year as of Date2, and about 19% of your total expenditures that you projected for Year. You provided no information to suggest that these expenditures should not be proportionately attributable to your television advertisements and printed communications that constitute political campaign intervention.

In your letter dated Date2, you stated that political campaign activity "currently constitutes less than one-third of [your] expenditures, and in no event shall political intervention exceed 40% of [your] activities." However, the information you have provided on your expenditures does not support your estimate of the relative proportion of your political campaign activities. While all facts and circumstances are taken into account in determining an organization's primary activity for purposes of determining whether an organization primarily engages in activities that promote social welfare, you have provided no information suggesting that your expenditures are not a reasonable measure of your relative proportion of activities, nor have you provided any alternative measures to use.

CONCLUSION

Based on our analysis of the information you provided in connection 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). Accordingly, you are not exempt under § 501(c)(4).

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:

Internal Revenue Service
TE/GE SE:T:EO:RA
ATTN:
1111 Constitution Ave, N.W.
Washington, DC 20224-0002

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,