



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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SUBJECT: 2008 Political Campaign Season

This letter outlines goals with respect to the Political Activities Compliance Initiative for the 2008 election cycle.

This is the third election cycle in which EO has employed a focused approach toward political campaign intervention by section 501(c)(3) organizations. For 2008, existing goals for the program will continue:

- Educate the public and the relevant community, and provide guidance, on the prohibition on political campaign intervention by section 501(c)(3) organizations.
- Maintain a meaningful enforcement presence in this area.

Current procedures will remain in place through this cycle. These procedures provide important taxpayer and consistency safeguards and advance the examination process. Thus, for example, EO will continue to use the PACI Referral Committee and a project coordinator. As in the past, this committee of career civil servants with extensive EO tax law experience will continue to determine which cases to pursue, and the project coordinator will help ensure consistency. While existing processes will not change, additional direction is warranted in some areas, as noted below.

Education: Update and Execute the Plan

As in PACI 2004 and 2006, the first goal is to educate the community of section 501(c)(3) tax-exempt organizations and other stakeholders involved in political campaigns.

To advance this goal, EO will continue its concerted effort to educate and alert the public about the consequences of political campaign intervention for section 501(c)(3) organizations and other categories of tax-exempt organizations. EO must use the knowledge gained in the two previous election cycles, and redouble efforts to reach out to the tax-exempt community. To that end, EO has designed and is in the process of implementing an education plan focused on:

- Communications targeted to specific segments of the tax-exempt community that may not have been reached with past efforts.
- Greater use of both traditional and newer outreach methods to circulate publications and published guidance addressing political campaign intervention. This includes use of the on-line *EO Update*, IRS telephone forums, and the use of other web-based educational technology.

Enforcement: Focus on Cases Involving Allegations of Egregious Violations and Work Strategically in Specific Areas

Background

EO will continue enforcement activity in this area and will continue its efforts to publish guidance that will reduce areas of confusion or conflict. As a general matter, EO will concentrate on allegations of more egregious violations and the cases that result from them. As always, EO needs to continue to work closely with Counsel throughout the process.

Past experience with PACI has highlighted several areas where more refined attention is warranted. What follows are some specific instructions for the coming year.

Cases Involving Issue Advocacy and Potential Campaign Intervention

While Revenue Ruling 2007-41 identifies several factors to analyze in determining whether an issue advocacy communication results in political campaign intervention, and illustrates their application through examples 14, 15 and 16, the IRS has encountered a number of cases with varied fact patterns not directly covered by those examples. EO must be prepared to face taxpayer challenges, which may lead to court, regarding IRS published positions on issue advocacy, whether the fact patterns involved match the examples provided in the Revenue Ruling or present novel facts and circumstances.

EO must look carefully at organizations that advocate particular positions on issues but also may be providing information about specific candidates and their positions on these same issues. For example, there are instances involving issue advocacy carried out through single issue pamphlets described as “voter guides.” While these single-issue pamphlets do not on their face provide information on specific candidates or elections, that should not end the inquiry. To determine whether a communication is permissible issue advocacy or prohibited political campaign intervention, consideration must be given to the context in which it is distributed, and to whether the manner of distribution and other facts and circumstances surrounding the communication tips the scale in one direction or another. Distribution of a communication that on its face appears to satisfy the requirements of a permitted issue advocacy communication may become impermissible campaign intervention if it is accompanied by a statement, or an action, that ties a position articulated in the communication to a particular candidate or election.

Internet Cases – Web Sites of Section 501(c)(3) Organizations with Links to Web Sites of Other Organizations.

Experience indicates that there are numerous cases involving potential political campaign intervention in the form of communications posted on Web sites operated by section 501(c)(3) organizations. Many of these communications include links to Web sites of other organizations. The analysis of cases involving links on a section 501(c)(3) organization Web site involves determining whether material on a linked Web site is attributable to the section 501(c)(3) organization.

There are several possible characterizations of such links. One suggests the link is akin to a referral from one source of information to another that the viewer can pursue or not pursue at his or her discretion. Another suggests the link is analogous to a distribution by the section 501(c)(3) organization of the information contained on the linked Web page. However, neither of these characterizations appropriately reflects the facts and circumstances in all cases, nor offers a single approach to resolving all such cases. As Revenue Ruling 2007-41 notes, the context for the link on the organization’s Web site matters, as does the directness of the links between the organization’s Web site and a Web page favoring or opposing a candidate. The principles articulated in the revenue ruling are reinforced by work on these cases which suggests that electronic proximity – including the number of “clicks” that separate the objectionable material from the 501(c)(3)’s Web site – is a significant consideration.

To best employ resources in this area, EO will distinguish between cases involving unrelated organizations and those involving related organizations.

Cases Involving Links Between Unrelated Organizations

Where a case involves a link between a section 501(c)(3) organization's Web site and the site of an unrelated organization (whether or not exempt), EO will pursue the case if the facts and circumstances indicate that the section 501(c)(3) organization is promoting, encouraging, recommending or otherwise urging viewers to use the link to get information about specific candidates and their positions on specific issues. Again, analysis of the context around the link is a key factor.

Further, where the facts and circumstances suggest that a section 501(c)(3) organization is using a link between Web sites (other than a link to a related section 501(c)(4) organization, which is discussed below) to indirectly communicate a message that could well be a violation of the law were it done directly, EO will pursue the case.

Cases Involving Links Between Related Organizations

Additional considerations exist, however, in the case of related organizations. Enforcement in this area requires EO to consider the implications of *Taxation with Representation of Washington*, particularly Justice Blackmun's concurring opinion. That opinion emphasizes the formal corporate separation between a section 501(c)(3) organization and its related section 501(c)(4) organization. Because this added consideration can complicate the analysis in this area, EO will focus on analyzing the context around a link in the unrelated organization cases, and not pursue, at this time, cases involving a link between the Web site of a section 501(c)(3) organization and the home page of a Web site operated by a related section 501(c)(4) organization.

In addition to the above scenarios, there are situations where a section 501(c)(3) organization itself (1) takes a position on an issue, and (2) provides information about candidate positions on the same issue, placing the organization at risk of having intervened in a political campaign. The risk arises, and the case should be pursued, even if the two elements are in separate parts of the organization's Web site, or if one element is on the Web site and the other is not.

Political Contributions by Section 501(c)(3) Organizations

EO must continue to address direct contributions made by charities to political candidates. This type of case will remain an important focus for examinations in 2008.

Section 501(c)(4) Implications

Due to the application of non-tax election laws, there may be some drift of political work from PACs to social welfare organizations and other non-charities. Language in the 2008 Implementing Guidelines already indicates that EO will respond to reports of increased political campaign activity by conducting an outreach and compliance program focused on the tax rules applicable to political campaign activity by section 501(c)(4) organizations. EO also must develop an examination project that will:

- Examine whether such organizations are paying the appropriate tax on political expenditures, as required under section 527(f).
- Ensure that such organizations are not exceeding permissible limits on political activity.
- Determine whether such organizations should properly be taxed as section 527 organizations, with appropriate tax consequences.

Although most of this examination activity will have to occur after the election, there may be opportunities to act on this topic sooner.

Next Steps

- Fully implement the educational plan developed for this year. After the election cycle, revisit the plan and further enhance it based upon experience this year.
- Issue a field service directive focusing on the need to take into account the context surrounding the distribution of issue advocacy communications and voters' guides, in order to provide additional clarification of EO's enforcement position in this area.
- Issue a field service directive providing that EO will not pursue cases involving links to the home page of a related section 501(c)(4) organizations while the IRS continues to develop its legal analysis in this area.
- Consider a project for 2009 that reviews the flow of funds and other resources between affiliated groups of organizations that include one or more section 501(c)(3) organizations, one or more section 501(c)(4) organizations, and one or more section 527 organizations. The purpose of such a project is to understand how these affiliations work and to ensure that campaign activity is not being subsidized by the section 501(c)(3) organization. Such a project might also lead to a better understanding of the relationship between related organizations for other purposes, including in the context of Internet links from the section 501(c)(3) organization to the Web site of a related organization.

Looking beyond the 2008 election, the Commissioner, TE/GE has requested that EO prepare a report on the 2008 PACI program by March 31, 2009. Among other things, the report should include (i) recommendations arising from this year's election cycle for the future direction of the PACI program, (ii) an assessment of the effectiveness of the limited statutory tools available to address instances of political intervention, and (iii) an identification of troubling trends. As in the past, the assistance of the charitable community will be solicited to identify areas requiring additional guidance.