



March 18, 2014

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Comments on 501(c)(4) Proposed Regulations (REG-134417-13) – Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities

Dear Commissioner Koskinen:

The American Institute of Certified Public Accountants (AICPA) appreciates the opportunity to provide comments on REG-134417-13,¹ proposed regulations on guidance for tax-exempt social welfare organizations on candidate-related political activities.

The AICPA applauds the Internal Revenue Service (IRS) on the initiation of a notice of public rulemaking (NPRM) project to address the present law which applies a “facts and circumstances” test to finding political activity or intervention by social welfare organizations. However, we are concerned about the possibility that newly proposed regulations are ambiguous, thus causing an increase in the reporting burden and cost of compliance for exempt organizations. We believe the development of a new simplified framework for the definition of “political activity” by section 501(c)(4) exempt entities, and all other section 501(c) qualified organizations, is a more clear and fair approach.

Our recommendations, along with the following analysis, were developed by the AICPA Exempt Organizations Taxation Technical Resource Panel and approved by the AICPA Tax Executive Committee.

AICPA Recommendation

The AICPA encourages the Department of the Treasury (“Treasury”) to consider an approach for adopting a definition of political activity that applies to all tax-exempt organizations. The recommended steps for this approach are as follows:

- 1) Apply to the section 501(c)(3) proscription on conduct of political activities, as well as to other section 501(c) organizations’ qualifications and activities and, further, to ancillary Internal Revenue Code (IRC or “Code”) section directives.²

¹ Federal Register, Vol. 78, No. 230, Internal Revenue Service, [Proposed Regulations REG-134417-1](#): “Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities,” dated November 29, 2013.

² Examples include:

- 1) Section 162(e) limit on deductibility of expenditures for such activities.
- 2) Section 170(c)(2)(D) limit on charitable contributions deduction to entities engaged in such activity.

- 2) Identify activities that are always treated as political campaign intervention, such as endorsing a candidate or contributing to a candidate or political party.
- 3) Provide that any communication that clearly refers to and expresses a view on a political candidate is generally deemed political intervention unless the communication fits within one of four specific exceptions (these exceptions would protect legitimate advocacy on current policy issues, nonpartisan efforts to educate the public on candidate policy positions, measured responses to candidate statements about the organization or its core issues, and certain remarks made by speakers at organization meetings). Furthermore, organizations engaged in activities deemed as political interventions under this standard can argue “facts and circumstances” to rebut the general presumption that their activities are political.
- 4) Incorporate bright line standards that permit non-political voter engagement, including voter registration and “get-out-the-vote” initiatives. The standards should provide that activation of voters based on their candidate or party preference, or with a message favoring or disfavoring a candidate or party, constitute political intervention. On the other hand, if the program contains neutral messages on issues and is targeted to a nonprofit’s natural constituency or to under-represented segments of the voting population, it is safely treated as nonpartisan (i.e., not the conduct of political activity).

Analysis

The AICPA urges the inclusion of bright line rules in the drafting of a new framework,³ rules similar to Congress’ enactment of sections 501(h) and 4911 in 1976, and the attendant regulations thereunder issued in 1990. Those regulations implemented clear rules for what lobbying is and how much lobbying section 501(c)(3) organizations can do. For decades, those rules have effectively guided section 501(c)(3) organizations and their advisors. The bright lines approach,⁴ as described above, follows a similar trajectory to the lobbying definitions, but in this instance addresses what constitutes political activity.

We also believe that income tax regulations should state what constitutes political activity by tax-exempt organizations by creating a set of clear rules for what is and is not political activity. Confusion about the current rules as to what constitutes such activity on the part of either section 501(c)(3) organizations (for whom such activity is completely banned) or section 501(c)(4) organizations (who have such activity “limited,” although no specific quantification of the limit is employed) may have been a source of the IRS’s difficulty in addressing exemption applications when potential political activity is indicated.⁵

3) Section 6033(e) “proxy tax” on organizations with conduct, such activities, and have solicited funds without proper notice as to what percentage of contributions support such ends.

³ See the [Bright Lines Project \(BLP\)](#), a [Public Citizen](#) project involving a broad diverse coalition of nonprofit leaders, organizations, and tax law experts.

⁴ *Id.*

⁵ Treasury Inspector General for Tax Administration’s Report, “[Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review](#),” dated May 14, 2013.

Conclusion

The AICPA supports tax legislation and an overall framework that promote simplicity, fairness, and the ease of compliance. The confidence of exempt organizations, tax preparers, and the public, in the enforcement of tax laws, is diminished when the application of these laws are unclear or difficult to understand. Therefore, we respectfully recommend a consistent tax law definition of the term “political activity” for all section 501(c) entities.

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We appreciate your consideration of our recommendations and welcome the opportunity to discuss these items further. If you have any questions, please feel free to contact Jeanne Schuster, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel, at (617) 585-0373, or jeanne.schuster@ey.com; or Amy Wang, AICPA Technical Manager, at (202) 434-9264, or awang@aicpa.org.

Respectfully submitted,



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Chair, Tax Executive Committee

cc: The Honorable William J. Wilkins, Chief Counsel, IRS
Ms. Sunita Lough, Commissioner, Tax Exempt and Government Entities, IRS
Ms. Amy F. Giuliano, Office of the Associate Chief Counsel, Tax Exempt and Government Entities, IRS
The Honorable Mark Mazur, Assistant Secretary for Tax Policy, Department of the Treasury
Ms. Lisa Zarlenga, Tax Legislative Counsel, Department of the Treasury
Ms. Ruth Madrigal, Attorney-Advisor, Office of Tax Policy, Department of the Treasury