

POSSIBLE REVISIONS TO SECTION 501(C)(4)

Aug 13, 2012

BACKGROUND

Section 501(c)(4) of the Internal Revenue Code provides, in relevant part, an exemption for “[c]ivic leagues or organizations not organized for profit but operated *exclusively* for the promotion of social welfare.” With respect to the meaning of “exclusively”, the regulations provide 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.”^[1] In order to be recognized as exempt under Section 501(c)(4), an organization must file a Form 1024 with the IRS.

Organizations described under Section 501(c)(4) can conduct unlimited lobbying and are permitted to conduct limited campaign activities.^[2] On the other hand, organizations exempt under Section 527, commonly called “political committees”, can engage in unlimited campaign activity. It is not uncommon for a 501(c)(3) organization to form a 501(c)(4) affiliate and for a 501(c)(4) to form a 527 affiliate.

The Form 990, including Schedule B – Schedule of Contributors, must be filed annually by 501(c)(3), 501(c)(4) and 527 organizations. But the Schedule B is only open for public inspection if filed by a 501(c)(3) private foundation or a 527—but not if filed by a 501(c)(4) organization.

RECENT ACTIVITY

Recently, critics from both major political parties have called for changes to Section 501(c)(4). On March 12, 2012, a group of 7 Senate Democrats led by Charles E. Schumer wrote a letter to the IRS commissioner requesting that the IRS (i) adopt a bright line rule for what “primarily” means (and suggesting that 51% is not consistent with the word “exclusively”), (ii) require 501(c)(4) organizations to “show their math” to demonstrate that their social welfare activities are primary and (iii) require 501(c)(4) organizations to tell potential donors what percentage of a donation, if any, may be taken as a business deduction. The letter concluded that, if the IRS fails to take administrative action regarding these issues, legislation would be introduced to do so.

On March 14, 2012, a group of 12 Senate Republicans led by Orrin Hatch wrote a letter to the IRS commissioner seeking clarity on the 1024 approval process and the questions to be asked as part

of that process. The letter was motivated by concerns regarding “selective enforcement and the duty to treat similar taxpayers similarly.” Then, on March 27, 2012, the House Oversight Committee launched an investigation into IRS review of Forms 1024 filed by conservative organizations. At the same time, House Democrats have called on the IRS to scrutinize certain Republican-affiliated 501(c)(4)s to determine whether they have engaged in excessive political activity.[3]

CONCLUSION

At this point, it is not clear whether these calls for action will lead to any changes in the substance of Section 501(c)(4) law or the procedure for reviewing and governing 501(c)(4) organizations. The cries may be nothing more than political posturing against the backdrop of the upcoming Presidential election. But they are worth keeping an eye on because some of these changes, if enacted, such as public disclosure of a 501(c)(4)s donors, could have a big impact on 501(c)(4) organizations.

[1] Treas. Reg. 1.501(c)(4)-1(a)(2)(i).

[2] Treas. Reg. 1.501(c)(4)-1(a)(2)(ii).

[3] Representative Peter Welch announced he is leading 32 of his colleagues in this regard. 2012 TNT 62-37 (March 30, 2012). If a 501(c)(4) organization has violated the limits on political activities, it faces loss of exempt status, tax under Section 527, and possible late fees if loss of exemption is retroactive.

MEET THE TEAM



Nathan M. Boyce

St. Louis

nathan.boyce@bcplaw.com

[+1 314 259 2257](tel:+13142592257)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and

professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP's principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.