

PROPOSED REVISIONS TO SECTION 501(C)(4) REGULATIONS

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BACKGROUND

Currently, Treasury Regulation Section 1.501(c)(4)-1 provides for exemption under Section 501(c)(4) for an organization that 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 The promotion of social welfare does not include “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.” Currently, the determination regarding whether a given activity constitutes such participation (as well as the determination of what is primary) is made by a facts and circumstances analysis. In connection with the 2012 presidential election, there were many calls to revise the rules governing Sections 501(c)(4) and 501(c)(3) organizations with respect to political activity.

PROPOSED REGULATION

In the end of November, 2013, the IRS published Proposed Regulation Section 1.501(c)(4)-1 (“Proposed Regulation”). The Proposed Regulation replaced the second quote in the preceding paragraph with “The promotion of social welfare does not include direct or indirect candidate-related political activity” and then defines “candidate-related political activity” by enumerating eight specific activities. In particular, they are:

- any communication “expressing a view on the selection, nomination, election, or appointment of one or more clearly identified candidates or of candidates of a political party” that contains advocacy words (like “support” or “oppose”) and is “susceptible of no reasonable interpretation other than a call for or against”;
- any public communication “within 30 days of a primary election or 60 days of a general election that refers to one or more clearly identified candidates in that election or, in the case of a general election, refers to one or more political parties represented in that election”;
- any communication the “expenditures for which are reported to the Federal Election Commission, including independent expenditures and electioneering communications”;

- a contribution or solicitation on behalf of a candidate for elective office, a Section 527 organization or a Section 501(c) organization that engages in candidate-related political activity;
- “Conduct of a voter registration drive or ‘get-out-the-vote’ drive”;
- “Distribution of any material prepared by or on behalf of a candidate” or a Section 527 organization;
- “Preparation or distribution of a voter guide that refers to one or more clearly identified candidates or, in the case of a general election, to one or more political parties”; and
- “Hosting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program”.

The IRS is seeking comment on the Proposed Regulation as well as a variety of related topics, such as whether the same rules should apply to the definition of political campaign intervention under Section 501(c)(3) and what proportion of candidate-related activity should be permitted.

RESPONSE

Many of the responses to the Proposed Regulation have been calls for withdrawal. For example, the Americans for Tax Reform claim, among other things, that points (vii) and (viii) violate the First Amendment.² Concerned Women for America claim, among other things, that the Proposed Regulation violates the Fifth Amendment by treating Section 501(c)(4) organizations differently than other Section 501(c) organizations;³ the NAACP raised a similar concern regarding disparate treatment between Sections 501(c)(3) and 501(c)(4).⁴ Others have proposed revisions to the Proposed Regulation.⁵

Altogether as of early April 2014, according to the IRS commissioner John Koskinen, the IRS received more than 150,000 comments on the Proposed Regulation; to put it in perspective that is about “double the number of public comments the IRS received on all Treasury and IRS draft proposals over the last seven years.” The commissioner added that it was unlikely the Proposed Regulations would be finalized in 2014.⁶ On May 22, the IRS announced that it would likely make some changes to the Proposed Regulation, though the IRS still intends to hold a public hearing on the Proposed Regulation this summer.⁷

CONCLUSION

At this point, it is not clear what changes, if any, will be enacted with respect to Section 501(c)(4) and/or political activity for other exempt organizations. The number of responses indicate that this is a subject that impacts many interests and any changes would have far-reaching effects.

1. Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).
2. 2014 TNT 52-13.
3. 2014 TNT 52-17.
4. 2014 TNT 40-16.
5. 2014 TNT 35-19 (Citizens for Responsibility and Ethics in Washington) and 2013 TNT 236-57 (Center for Competitive Politics).
6. 2014 TNT 64-4.
7. 2014 TNT 100-1.

MEET THE TEAM



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