

Is Your 501(c) (3) Organization Participating in Political Activities?



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With the 2012 presidential election upon us, now is a good time to review the rules regarding political activities by charitable organizations. Because the consequences to violators can be severe, including possible revocation of exempt status, knowing the rules will ensure that charitable organizations do not jeopardize their exempt status.

501(c)(3) organizations are prohibited from engaging in political campaign activities. They are not permitted to be an "action" organization as defined in any of the following three ways.

An organization is an action organization if:

- › a substantial part of its activities is attempting to influence legislation which includes supporting its adoption or rejection, and contacting legislators to propose, support or oppose legislation.
- › its main or primary purpose can only be attained by the passage or defeat of proposed legislation and it campaigns for the attainment of its objective or
- › it participates directly or indirectly in any political campaign on behalf of or in opposition to a candidate for public office on the national, state, or local level.

Charitable organization leaders and board members may not make partisan comments if it appears they are speaking on behalf of the organization. Additionally, partisan comments in publications, newsletters and at other official functions are prohibited. Leaders, who speak or write for themselves as individuals outside official tax exempt functions, should clearly indicate that their comments do not represent the views of the organization.

501(c) (3) organizations are allowed to have political candidates speak at their official functions as long as no campaign activity occurs at the event and the organization does not show any support of or opposition to the candidate. Any notice or announcement regarding the speaker should refrain from mentioning the individual's candidacy or the upcoming election.

Many 501(c) (3) organizations are involved in public policy issues and are not prohibited from communicating its position on an issue. However, when an issue clearly distinguishes the candidates before an election, taking a position may be construed as indirectly supporting or opposing a particular candidate. 501(c)(3) organizations may not publish or distribute, including on website or social media sites, information supporting or opposing candidates for public office. If political campaign information is on a website or other social media site to which the organization has established a link, it will be deemed to have intervened in a political campaign even if the organization has not control over the site.

The consequences to 501(c) (3) organizations can be severe if the political prohibition laws are violated. A 10% excise tax on political expenditures paid or incurred could be imposed which could increase to 100% if the political expenditure is not corrected within a certain period of time. Organization managers may also be subject to an excise tax if they knowingly allowed the inappropriate expenditure. The IRS may also revoke the organization's exempt status.

So what should 501(c) (3) organizations do to ensure that they do not violate the political intervention rules? The following steps should be implemented to prevent political intervention:

- › Establish a written policy prohibiting political activities detailing what is unacceptable.
- › Prohibit employees from engaging in tasks related to political activities during working hours or using organizational resources.
- › Establish internal controls to prevent political expenditures.
- › Include disclaimers of support for candidates whenever organization activities or .communications involve candidates.
- › Advocacy of issues should coincide with legislation not with an election.
- › Political signs must not be displayed on the organization's grounds.

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- › Monitor website links to ensure political messages are not on the sites.
- › Review social media content to ensure no political material exists that may appear to be connected to the organization.

The IRS is increasing its oversight of the ban on political activity by 501(c) (3) organizations. While the consequences to the organization can be severe, more important is the damage to the organization's reputation within the charitable community and well as the loss of public trust. Charitable organizations should be careful and avoid any appearance of politicking at all times, not just during an election year.

If you have any questions related to this article, please feel free to contact Tom Denson (tdenson@keitercpa.com) for further clarification.

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