Tax-exempt Organizations and Political Activities: A Potentially Dangerous Mix

With the economy, jobless rate, uncertain tax laws, looming healthcare and Medicare issues, mounting federal deficit, etc., many citizens and groups, including tax-exempt organizations, are most eager to engage in the political process to promote their various interests. In this melee, a very important tax issue is often overlooked (or not understood)—Section 501(c)(3) tax-exempt organizations (basically, charitable and educational organizations) are prohibited from engaging in any partisan political activity—period.

Over the last several years, the IRS has aggressively policed the political activities of Section 501(c)(3) tax-exempt organizations. Violations are often brought to the IRS’ attention by disgruntled opponents of the candidates or positions advocated by an exempt organization.

The penalty for violating the political activity rule is simple but deadly—loss of exempt status. Also, the organization and its managers may be subject to excise taxes on the political expenditures.

In Rev. Rul. 2007-41, the IRS provides 21 situations illustrating the do’s and don’ts of political involvement for Section 501(c)(3) tax-exempt organizations. This revenue ruling, plus other previously issued IRS guidance, provides useful information on staying out of trouble.

Prohibited Political Activities in a Nutshell

A Section 501(c)(3) organization is prohibited from participating in any political campaign on behalf of or in opposition to any candidate for public office. What’s a public office? It’s any elective office on the local, state, or national level. Thus, participating in a city council member’s election is as bad as participating in the presidential election.

How does an organization participate in a campaign? It publishes an oral or written statement for or against a candidate. It endorses a candidate. It contributes to a candidate’s campaign. It sponsors a candidate to speak at a meeting, without providing equal time to opponents. It distributes statements made by others for or against a candidate. In short, it takes any partisan action during an election.
Even the IRS concedes, however, that some political activities are okay so long as they’re totally nonpartisan. Also, organization leaders can voice their own opinions, but only when speaking on their own as individuals, not on behalf of the organization. This gets tricky. Let’s look at some activities.

Whether an individual is actually a candidate is not always clear. The IRS has held that an individual who has not expressed an intention to run is held to be a candidate if his or her campaign committee publishes material regarding his or her record and mentions his or her prospective candidacy.

**Voter Registration, Education, and Get-out-to-vote Drives**

Voter registration and education activities, including public forums and voter registration guides are allowable activities, so long as they are carried out in a nonpartisan manner. If any bias is introduced into the process, the activity becomes a prohibited activity.

Voter registration activity is okay as long as it is nonpartisan. Green, Inc., an exempt organization formed to educate the public on environmental issues, sets up a booth at a local carnival where citizens can register to vote. The signs and banners in and around the booth list only Green’s name, the date of the next upcoming election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms that allow registrants to select a party affiliation. This is not political campaign intervention and, thus, an allowable activity.

In a variation, Green, Inc., favors Candidate Mary Cleanair because she is challenging the environmental policies of the incumbent, George Smog. When people stop at the booth, the volunteer tells them about the importance of environmental issues and asks questions about their views on these issues. If someone appears to agree with the Smog’s position, the volunteer thanks them and ends the conversation. If the voter appears to agree with Cleanair’s position, the volunteer reminds the voter about the upcoming election, makes sure they are registered to vote, and offers to provide transportation to the polls. Green is engaged in unallowable political campaign intervention.

Voter education is permitted. However, if an exempt organization issues a voter guide (a pamphlet or other document designed to help voters compare candidates’ positions on issues), it must be unbiased.

Say, for example, that Church C publishes a voter’s guide for its members and others concerned with separation of church and state issues. The guide is a compilation of incumbents’ voting records on selected separation of church and state issues of importance to the church and is factual in nature. It is widely distributed during an
election campaign. By concentrating on a narrow range of issues and widely distributing the publication during an election campaign, C is directly participating in a political campaign, a prohibited activity.

**Individual Political Activity by the Organization’s Leaders**

The political activity prohibition neither restricts free expression on political matters by leaders of organizations speaking for themselves, as individuals, nor prohibits leaders from speaking about important issues of public policy. However, the leader should not use the organization’s financial assets, facilities, or personnel in any way and should clearly indicate that his or her actions or statements are entirely his or her own and not the organization’s. In addition, the leader’s individual views cannot be expressed in official organization publications or at official organization functions.

For example, say Dan is an executive of B, a Section 501(c)(3) organization, and is well known in the community. With B’s permission, a mayoral candidate publishes a full-page ad in the local newspaper listing five prominent community leaders who have personally endorsed him, including Dan, who is identified in the ad as an executive of B. The ad states, Titles and affiliations of each individual are provided for identification purposes only. The ad is paid for by the candidate’s campaign committee. Because the ad was not paid for by B, the ad is not in an official publication of B, and the endorsement is made by Dan in a personal capacity, the ad is not campaign intervention.

**Political Candidate Appearances**

An exempt organization can invite a candidate for public office to speak to its members. However, the organization must provide an equal opportunity to other political candidates seeking the same office. It must not indicate any support of or opposition to the candidate—and this lack of support or opposition must be explicitly stated in the candidate’s introduction and in any communication about the candidate’s appearance. Of course, there can be no political fundraising.

Providing equal opportunity can be tricky, since the nature and the importance of the events enter into the IRS’s determination of whether equal opportunity has been provided. Now, this doesn’t mean that all candidates have to be at the same event. However, an invitation to one candidate to speak at the annual membership dinner (which everyone attends) and an invitation to the other candidate to speak at the August meeting (which few people attend because of vacations) isn’t equal opportunity.

If an exempt organization sponsors a candidates’ forum, the event must be scrupulously nonpartisan. This means neutrality in questions presented, issues covered, and equal opportunity to present views. Additionally,
the moderator or moderators can’t imply approval or disapproval of the candidate and can’t ask whether a candidate agrees or disagrees with one or more of the organization’s positions.

**Political Candidates Not Acting as Such**

None of this prevents any candidate from appearing at an exempt organization event as a noncandidate. For example, a candidate who is a public figure may be asked to speak in his or her role as that public figure, as an incumbent elected official, or for any similar reason. In that event, no reference to the speaker’s candidacy can be made, and the exempt organization must maintain a strict nonpartisan position during the speech. Of course, a candidate can always attend a public event sponsored by an organization, without any worry that the organization’s exempt status is threatened. However, the organization can’t acknowledge his or her candidacy or ask for any comments without providing equal opportunity to other candidates.

Take, for example, Zealous, Inc., an exempt organization, sponsors an annual barbeque that every big shot in the surrounding area attends. This year’s barbeque occurs three weeks before a hotly contested Mayoral election. Both candidates attend, but Zealous really favors Sue over Joan. At the traditional pre-meal comments, Bill, Zealous’ president, acknowledges Joan without reference to her candidacy. However, in introducing Sue, he mentions the organization’s fondness for her, and then jokingly says Based on the way she’s shaking hands and kissing babies, I guess I don’t have to tell you she’s running for Mayor.” Unfortunately, this little joke means Zealous has engaged in prohibited political activity.

**Political Activity in the Organization’s Newsletter**

A charitable organization can publish a newsletter of incumbents’ voting records on selected issues when (1) all incumbents’ records are reported, (2) candidates for reelection are not identified, (3) no endorsement or rejection of any candidate is made, (4) it is distributed to normal readership and not targeted to specific areas where an election may be pending, and (5) it doesn’t compare incumbents with other candidates (Rev. Rul. 80-282). Of course, the determination depends on the facts and circumstances.

Take, for example, Organization A, which prints a magazine that contains the abortion views of two candidates, one candidate is pro-choice, and the other is pro-life. In a local TV interview, an Organization A leader said that the organization’s mission cannot support abortion; thus, the organization has identified the favored candidate and this could be considered political campaign intervention.
Political Activity on the Organization’s Website

An organization that posts material on its website favoring or opposing a candidate for public office will be treated the same as if it distributed printed material, oral statements, or broadcasts that favored or opposed such candidate. An organization may be guilty of political intervention if its website contains a link to a political organization. All the facts and circumstances must be taken into account when assessing whether a link produces that result, including the context for the link on the organization’s website, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization’s website and the web page containing information that favors or opposes a candidate for public office.

Take Organization D, for example. It publishes a voter’s guide on its own website and provides links to the websites of all candidates in a local council race on a consistent basis with the statement, “For more information on Candidate X, you may consult (website).” The organization did not intervene in a political campaign because the links were provided for educating voters and were presented in an unbiased manner that included all the candidates for a particular office.

However, say that Organization D’s website includes the biographies of its staff members and details of its community outreach programs. Staff member, Mary, is running for a seat on the town council. Shortly before the election, D posts the following message: “Lend your support to Mary, your community partner, in Tuesday’s election for town council.” D has intervened in a political campaign on behalf of Mary.

The loss of exempt status is a steep price to pay for political activity, particularly when an organization inadvertently blunders into the problem. Understanding the political activity rules and constantly monitoring any activity that might get an exempt organization into trouble is a good way to help exempt clients avoid the loss of their exempt status.