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# IRS Tightens Rules Regarding Tax-Exempt Social Welfare Groups

On Nov. 29, 2013, the U.S. Department of Treasury and the Internal Revenue Service issued proposed regulations<sup>1</sup> redefining the qualifications for tax exemption as a social welfare organization under section 501(c)(4) of the Internal Revenue Code. These draft regulations contain a definition for political activity new to the IRS but akin to other federal and state laws and regulations and amend the current regulations by specifically excluding this sort of activity from what counts toward the primarily social welfare purpose required of these organizations. The aim of this change is to add bright-line rules to what is currently a fact-intensive inquiry.

<sup>1</sup> <http://www.gpo.gov/fdsys/pkg/FR-2013-11-29/pdf/2013-28492.pdf>

## The Social Welfare Requirement

Section 501(c)(4) requires qualifying organizations to operate “exclusively” for the purpose of social welfare. Treasury Department regulations interpret this exclusivity requirement as mandating that political activity cannot be a 501(c)(4) organization’s “primary purpose.”

What constitutes “primarily,” however, is not specified in the regulations. The current regulations exclude from what qualifies as social welfare the “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.” To determine if this test has been satisfied, the IRS examines the facts and circumstances of an organization’s activities to determine if its purpose is primarily for political purposes, rather than primarily for social welfare, which would disqualify the organization for 501(c)(4) tax exemption. Notably, organizations that qualify for 501(c)(4) generally need not disclose their donors or grantees.

## Adjusting the Language

The new regulations would replace the “participation or intervention in political campaigns ... for public office” language with the term “candidate-related political activity.” Under the proposal, the promotion of social welfare would exclude this sort of political activity. The IRS also provides a list of activities that are *per se* political. Specifically, the proposed regulations state that the following are covered political communications, grants, contributions and other activity:

Communications expressly advocating for a clearly identified political candidate or candidates of a political party.

Communications made within 60 days of a general election (or within 30 days of a primary election) and clearly identify a candidate or political party.

Communications expenditures that must be reported to the Federal Election Commission.

Any contribution recognized under campaign finance law as a reportable contribution.

Grants to section 527 political organizations and other tax-exempt organizations that conduct candidate-related political activities.

Voter registration and “get out the vote, or GOTV” drives.

Distribution of material prepared by or on behalf of a candidate or by a section 527 political organization.

Preparation or distribution of voter guides referring to candidates (or, in a general election, to political parties).

Hosting an event within 60 days of a general election (or within 30 days of a primary election) at which a candidate appears as part of the program.

Definitions are included in the proposed regulations to clarify many of the key terms.

In addition, the proposed regulations request public comments on what constitutes “primarily” social welfare, or, stated differently, the portion of a section 501(c)(4) organization’s activities that must promote the social welfare. The draft regulations also request comments regarding whether standards similar to those proposed for section 501(c)(4) organizations should be applied to other tax-exempt organizations. The IRS has stated an intention to issue further guidance on these matters in the future.

### **What This Means to You**

The aim of this change is to add bright-line rules to what is currently a fact-intensive, and arguably subjective, inquiry. The draft rules come in the midst of congressional investigations and other attention into allegations that the IRS subjected applications for tax-exempt status submitted by certain partisan groups to heightened scrutiny. Currently, there is considerable debate among policy makers, the legal community and affected organizations over the efficacy of the proposed regulations as written. The Center for Competitive Politics, for example, is one organization that has already filed comments to the rules, and many more public comments are anticipated. Impacted organizations and others may submit written or electronic comments about the proposed regulations and requests for a hearing to the IRS as late as Feb. 27, 2014. Some iteration of these proposed regulations will probably be enacted, likely after the 2014 elections.

### **Contact Information**

For information on this or other election-law issues, please contact your Husch Blackwell attorney or a member of our Government Ethics & Election Law team.