

Lobbying Activities — A Checklist of What One Can Put In A Newsletter

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I. ISSUE

Many non-profit organizations are becoming more pro-active. As part of these efforts, such organizations want to keep the memberships informed and direct their members to take action. These interests raise issues of what types of legislative information can be printed in periodical newsletters or publications sent primarily to members.

II. DISCUSSION

It is no small feat to try to distill the Internal Revenue Services' rulings, regulations, and statutes concerning restrictions on lobbying and legislative activities into a concise and helpful checklist of what can or cannot be done. Having said this, I have tried to set forth the type of legislative and lobbying information that may be published in a newsletter to members, along with other types of information that cannot be so published.

As background, we must all bear in mind that the Revenue Act of 1934 added limitations to IRC Sec. 501(c)(3). Specifically, the Act provided that "*no substantial part of the activities of an exempt organization may be devoted to carrying on propaganda, or otherwise attempting to influence legislation*".

In 1954, Congress added the bar to participation or intervention in political campaigns *on behalf of* candidates for public office. However, in 1976, Congress added certain elections that exempt organizations could make to avail themselves of specific monetary limitations on lobbying responses. In 1987, Congress added the prohibition relative to campaigning *against* the candidate for public office. Therefore, there exists various parameters defined by the Internal Revenue Code as well as the Regulations within which tax-exempt organizations can operate and discuss legislative activities. Also, there are various elections that public charities can afford themselves in order to take advantage of more precise parameters for legislative activities.

A. Permissible Activities

The IRS expects to promulgate final regulations during 1990 on these issues. Today, present IRS publications and rulings state, that in general, a tax-exempt organization can take positions for or against proposed or existing legislation. They can "call to action" individuals and encourage them to communicate with legislators. They can publish explicit requests giving addresses and telephone numbers of legislators and provide petitions and tear-off post cards. They may even identify the position of legislators who will vote on the legislation.

The IRS' definition of "influencing legislation" *does not* include the following activities, all of which are permissible: (1) making available results of non-partisan analysis, study, or research; (2) providing technical advice or assistance in response to a written request by a government body; (3) appearances before, or communications to, any legislative body regarding a decision that might effect the organization's existence, powers and duties, tax-exempt status, or deductibility of contributions to it ("self-defense" exclusion); (4) communications between the organization and its members that do not directly encourage members to influence legislation, or directly encourage members to urge non-members to influence legislation; and, (5) routine communication with government officials. (I.R.C. §4911(d)(2)).

Charitable organizations under certain circumstances may publish newsletters containing the voting records of congressional incumbents on selected issues. The format and content of publications need not be neutral. Each incumbent's votes in the organization's views on selective legislative issues can be reported. Publications may indicate whether the incumbent supported or opposed the organization's view. The following factors will demonstrate to the IRS the absence of prohibited political campaign activity: (1) the voting records of all incumbents will be presented; (2) candidates for re-election will not be identified; (3) no comment will be made on an individual's overall qualification for public office; (4) no statements will expressly or impliedly endorse or reject any incumbent as a candidate for public office; (5) no comparison of incumbents with other candidates will be made; (6) the organization will point out the inherent limitations of judging the qualifications of an incumbent on the basis of certain selected votes, by stating the need to consider such unrecorded matters as performance on sub-committees and constituent service; (7) the organization will not widely distribute its' compilation of incumbents' voting records; (8) the publication will be distributed to the organization's normal readership; and, (9) no attempt will be made to target the publication toward particular areas in which elections are occurring nor to time the date of publication to coincide with an election campaign. (Rev. Rul. 80 - 282, 1980 - 2 C.B. 178.)

B. Forbidden Activities

Tax-exempt organizations may not evaluate the qualifications of potential candidates and then support particular slates. Tax-exempt organizations *can* (1) prepare and disseminate a compilation of the voting records of all incumbents in the legislature on a wide variety of major subjects, so long as there is no editorial comment and no approval or disapproval of the voting records, express, or implied; and, (2) publish the responses to its' questionnaire on a wide variety of subjects from all candidates for an office, so long as no preference is expressed. Tax-exempt organizations *cannot* (1) publish candidates' answers to questions that indicate a bias on the issues, or (2) publish a voter guide reflecting the voting records for incumbent legislators on selected issues of interest to the organization. (Rev. Rul. 78 - 248, 1978 - 1 C.B. 154.)

An organization may not rate candidates for public office on a non-partisan basis, since that is "participation or intervention on behalf of those candidates favorably rated in an opposition to those less favorably rated". (Rev. Rul. 67 - 368, 1967-2 Cum. Bull. 194.)

Penalties for violation of restrictions on political expenditures include both an excise tax as well as the potential of losing tax-exempt status.

III. CONCLUSION

In conclusion, it is legitimate and appropriate for a tax-exempt organization to work for the passage of legislation that would further its cause, whether during a campaign or not. This assumes, of course, that the organization complies with other applicable statutes, especially the lobbying limitations set forth by Congress in the tax amendments of 1976.

On the other hand, it is not permissible to work for the election of a political candidate, whether this be for federal, state, or local elections. That is strictly prohibited and could result in a tax-exempt organization's loss of both its exempt status and its ability to assure donors that their contributions are tax deductible.

Finally, bear in mind that the foregoing analysis is a simplified explanation of a complex subject. It is in no way intended as a substitute for professional legal advice.