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Take extra care with nonprofit's tax-exempt status in election year

Voters will put a new face in the White House next year, and Marylanders will decide whether to allow slot machines to be a legalized source of tax revenue.



TAX LAW

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Many nonprofit organizations have a vested interest in political issues and their outcomes. But it's important that nonprofit organizations, boards and leaders clearly understand how their campaign-related activities could attract unwelcome IRS scrutiny.

Churches, charities and schools — 501(c)(3) nonprofit organizations that are tax exempt — are prohibited by the IRS from being directly or indirectly involved in campaigns of political candidates. The prohibition applies to federal, state or local elections. If the IRS finds that a nonprofit organization has illegal involvement in an election, the organization could be subject to an excise tax, or loss of its tax-exempt status.

Organizations, particularly churches, often invite political candidates to appear at their events. To avoid violating the IRS's ban against political campaign participa-

tion, the nonprofit must provide an equal opportunity for other candidates to appear at the same, or a similar, event. In addition, the nonprofit must not show support for or opposition to a particular candidate, and must not engage in any fundraising that is related to that event.

Nonprofit organizations are certainly allowed to take positions on public policy issues, such as gambling and same-sex marriage. However, the organization can't tie its position to a specific candidate. The IRS also considers the timing of advocacy in an election cycle.

Nonprofit organizations must not show preferential treatment to certain candidates. An organization that rents its mailing list, leases office space, or accepts paid political advertising, for example, must make such opportunities available to all candidates at customary rates, and ensure these activities are part of ongoing business activity.

Nonprofits that post information about a candidate on a Web site may be subject to IRS scrutiny. Likewise, organizations should be careful about posting links that might take someone to a Web site that focuses on a political campaign.

Despite all of the limitations imposed by the IRS, there are a number of campaign-

related activities that are permissible. IRS restrictions are not intended to infringe upon the free speech of leaders of nonprofit organizations, as long as it is clear that they are speaking for themselves as individuals. If they appear as representatives of their organizations or at official organization functions, then their statements will be attributed to their organization and fall under the prohibition.

Just as nonprofits can lobby for or against issues, they can also provide education about the voting process and encourage individuals to exercise their voting rights, as long as it is done in a non-partisan manner.

Leaders of nonprofit organizations should take extra care to ensure that their organizations' political activities fall within the allowable provisions of IRS laws. The recently-published "Revenue Ruling 2007-41" provides a summary of the tax law as well as multiple examples of situations that may arise, and indicates what, in the judgment of the IRS, may or may not be appropriate activity.

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