



potential gift tax liability for contributions to 501(c)(4)s - update

MSK Client Alert

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Contributions by individuals to 501(c)(4) "social welfare organizations" may be subject to gift taxes. However, there may be alternative giving structures available to avoid gift tax liability. Individual contributors to 501(c)(4)s may wish to consider carefully the possible gift tax implications of their contributions and to seek the advice of counsel.

Recipient 501(c)(4)s may face secondary liability for unpaid gift taxes owed by their contributors. As a result, 501(c)(4)s in receipt of large contributions from individuals may wish to seek the advice of counsel to address their potential liability for gift taxes.

A previous MSK Alert discussed the potential for gift tax liability in the context of contributions to 501(c)(4) organizations involved in political campaign activities. With election season now on a very brief hiatus, 501(c)(4)s of other stripes have arrived to battle on the legislative front.

For example, Repeal HealthCare Act is a newly organized 501(c)(4) that, its website says, "will engage in issue advocacy and grassroots lobbying to further the organization's core [presumably its namesake] purposes." The website points out that contributions to 501(c)(4)s are not deductible for federal income tax purposes. While the website also states that the organization may accept unlimited contributions from individuals, there is no mention of the gift tax.

Not to be outdone, proponents of last year's healthcare legislation have their own 501(c)(4), Americans United For Change, which has advertisements to counter Repeal HealthCare Act under the moniker "Repeal This!"

501(c)(4) organizations may participate or intervene in political campaigns on behalf of, or in opposition to, any candidate for public office, so long as they are not "primarily engaged" in those activities. Nonetheless, the Americans United For Change website provides that "[c]ontributions will neither be used to support or oppose the election of a clearly identified Federal candidate nor to influence

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Federal elections."

Regarding the tax consequences of contributions, the website indicates that "[c]ontributions or gifts to Americans United For Change are not tax deductible." Is the mention of "[c]ontributions or gifts" perhaps a subtle warning of potential gift tax implications? After all, charitable "contributions" to a 501(c)(3) are eligible for a deduction from income taxes, and those same "gifts" are also eligible for a deduction for gift tax purposes, effectively excluding them from the gift tax. Not so for 501(c)(4)s.

501(c)(4)s must disclose to the IRS, on Schedule B of Form 990, the names of contributors of \$5,000 or more and the aggregate amount of such contributions. As mentioned in the previous MSK Alert on this topic, with reports of large contributions in hand, the IRS may well find irresistible the potential revenue to be raised from assessing gift taxes on 501(c)(4) contributors.

Gift tax may only be a concern for large contributors. Currently, the annual exclusion from gift tax generally applies to gifts of \$13,000 or less to each recipient. The annual exclusion effectively is \$26,000 per recipient for married couples. The lifetime exclusion beyond that is \$5,000,000 for 2011 (indexed for inflation in 2012). However, the exclusion is set to decrease to \$1,000,000 beginning in 2013. For 2011 and 2012, the gift tax rate remains at the 2010 rate of 35%, but is scheduled to increase to 55% beginning in 2013.

As we mentioned in the previous MSK Alert, donors wishing to remain anonymous may feel the need to pay sizable gift tax assessments (or use lifetime exclusions that might otherwise be used for gifts to family members), rather than challenge the tax in open court, and on the public record.

As indicated above, there may be alternative giving structures available to avoid gift tax liability. Individual contributors to 501(c)(4)s may wish to consider carefully the possible gift tax implications of their contributions, to seek the advice of counsel and to include documentation of related tax-reporting positions (including any advice of counsel) with their tax records for the applicable year.

501(c)(4)s in receipt of large contributions from individuals may wish to seek the advice of counsel to address their potential liability for gift taxes.

If you have any questions about this Alert, please contact the author or any member of the MSK Tax Department.