



potential gift tax liability for contributions to 501(c)(4)s - update #2

MSK Client Alert

May 10, 2011

Perhaps sparked by the significant media coverage of large contributions to politically-minded 501(c)(4) "social welfare organizations," the IRS appears to have begun to actively pursue the gift tax on contributions to 501(c)(4)s.

Individual contributors and 501(c)(4)s may wish to consider carefully the possible gift tax implications of contributions, and to seek the advice of counsel. There may be alternative giving structures available to avoid gift tax liability, and both contributors and 501(c)(4)s need to be cognizant of the issues. 501(c)(4)s may face secondary liability for unpaid gift taxes owed by their contributors.

Two previous MSK Alerts¹ discussed the potential for gift tax liability in the context of contributions to 501(c)(4) organizations involved in political campaign activities, but keep in mind that gift tax assessments are not limited to contributions to politically active 501(c)(4)s.

The 2011 Workplan of the IRS Exempt Organizations Division indicates that "in recent years, our examination program has concentrated on section 501(c)(3) organizations. Beginning in FY 2011, we are increasing our focus on section 501(c)(4), (5) and (6) organizations."

It appears that the IRS Estate and Gift Tax team has also started paying attention to 501(c)(4) organizations. For example, a February 16, 2011, letter from the IRS begins: "Your 2008 gift tax return (Form 709) has been assigned to me for examination. The Internal Revenue Service has received information that you donated cash to [REDACTED], an IRC Section 501(c)(4) organization. Donations to 501(c)(4) organizations are taxable gifts and your contribution in 2008 should have been reported on your 2008 Federal Gift Tax Return (Form 709)."

The information received by the IRS referenced in the letter likely arrived by way of a standard Form 990 filing by the 501(c)(4) contribution recipient. 501(c)(4)s must annually 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.

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Per the previous MSK Alerts, 501(c)(4) contributors wishing to remain anonymous may feel the need to pay sizable gift tax assessments 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 contributions from individuals in excess of the annual gift tax exclusion may wish to seek the advice of counsel to address their potential secondary liability for gift taxes.

If you have any questions about this Alert, please contact the author or any member of the [MSK Tax Practice](#).

¹ ["Potential Gift Tax Liability for Election Year Contributions to 501\(c\)\(4\) Social Welfare \(Political?\) Organizations"](#) MSK Tax Alert (October 14, 2010).

["Potential Gift Tax Liability for Contributions to 501\(c\)\(4\)s - UPDATE"](#) MSK Tax Alert (January 27, 2011).