

Tax Corner: Shared Website Is Prohibited Political Intervention by 501(c)(3) Exempt Organization

March 2009

The Internal Revenue Service (IRS) determined in a recent Technical Advice Memorandum (TAM) that a 501(c)(3) exempt organization intervened in prohibited political activity by sharing its website with a related 501(c)(4) organization.

IRS § 501(c)(3) provides that a corporation organized and operated for charitable, scientific or educational purposes is exempt from federal income tax provided that it does not participate or intervene (directly or indirectly) in any political campaign in support of, or in opposition to, any candidate for public office. Whether an organization is participating or intervening in any political campaign depends upon all of the facts and circumstances.

Previously in Rev. Rul. 2007-41, the IRS determined that an organization posting material on its website that favors or opposes a candidate for public office will be treated the same as if it distributed printed material or broadcasts that favored or opposed a candidate. Rev. Rul. 2007-41 also held that an organization posting on its website support for a member in a local election was impermissible intervention in a political campaign.

In the new TAM, a 501(c)(3) organization controlled a 501(c)(4) organization. The (c)(4)'s website material was located on a separate set of web pages within the (c)(3)'s website and the (c)(4) reimbursed the (c)(3) for its proportional share of website costs. Regardless, the IRS ruled that the (c)(3) impermissibly intervened in a political campaign by distributing campaign endorsements on its web site.

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In the TAM, the (c)(3)'s banner, logo, site links, disclaimer and copyright notices were included on every web page within the website, including the (c)(4)'s web pages, which contained candidate questionnaires and endorsements of candidates for public office. According to the IRS, the banner and visual presentation of the (c)(4) web pages were "virtually indistinguishable" from the other web pages of the (c)(3)'s website. Therefore, the IRS determined that the (c)(3) had distributed the candidate questionnaires and endorsements in contravention of the rule against political intervention.

In light of this TAM, 501(c)(3) exempt organizations that are affiliated with PACs and 501(c)(4) organizations should carefully review the visual presentation of their web pages to verify that no political intervention occurs.