

IRS Issues Denial Letter to Political Group Seeking 501(c)(4) Status

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The Internal Revenue Service (IRS) recently released a denial letter issued this past March to a group appealing the agency's denial of its application for recognition as a 501(c)(4) tax-exempt social welfare organization. Although the IRS redacts identifying information about applicants in such letters, the Center for Public Integrity has identified the organization at issue as the now-defunct Arkansans for Common Sense (ACS).

During the 2010 Arkansas Democratic primary for U.S. Senate, ACS sponsored ads supporting the incumbent, then-Senator Blanche Lincoln, and opposing her challenger, former Arkansas Lieutenant Governor Bill Halter. ACS reported to the Federal Election Commission spending approximately \$192,000 on express advocacy independent expenditures supporting Lincoln during the primary, and approximately another \$446,000 opposing Halter during the runoff. On its 2010 IRS tax return, ACS also reported spending the same cumulative amount (\$637,817) on political expenditures. As the IRS denial letter noted, this was more than half of the \$1,229,688 in spending that ACS reported on its 2010 return for its program activities that year.

Under the IRS regulations, 501(c)(4) organizations may not be "primarily engaged" in political campaign intervention. Although the agency has never formally explained what this standard means in practice, an internal training document obtained through a FOIA request by Tax Analysts suggests 501(c)(4) organizations may not spend more than 50% of their total program activity expenses during a tax year on political campaign intervention.

Thus, the IRS could have denied ACS's application for 501(c)(4) status simply on the basis of the organization's own declarations on its tax returns. However, the IRS also took issue with many of ACS's activities that the organization may not have included in its total reported spending on political expenditures. Specifically, the IRS declared that all of ACS's ads "during [the] election campaign" were political campaign intervention. Elsewhere in the denial letter, the IRS suggested that these ads were "run during the periods leading up to the primary and general elections." The IRS did not explain when it considers an "election campaign" to begin, or what constitutes a "period leading up to the primary [or] general election."

In addition to the timing of the ads, the IRS noted that the ads “identified candidates and made positive or negative statements” about them, even if they did not necessarily “contain express statements to vote for a specific candidate,” and “were not part of an ongoing series of substantially similar advocacy communications on the same issue” by the organization. With respect to one ad that discussed Bill Halter’s position on an issue and told viewers to call Halter and “express opposition to his position on that issue,” the IRS noted that Halter “was not a government official in a position to vote on that issue.”

The IRS’s consideration of these factors appears to be consistent with the agency’s “facts and circumstances” test for determining political campaign intervention, as articulated in previous “revenue rulings” and other guidance. Consistent with the agency’s precedents, the IRS denial letter did not explain whether any one of these factors, if taken in isolation, is dispositive in a determination that an ad constitutes political campaign intervention, and, if no single factor is determinative, how the agency weighs these factors in totality.

In addition to ACS’s ads, the IRS also took issue with a poll the group conducted. The IRS stated that the poll “framed many questions in terms of statements that support or oppose a candidate. The poll included more statements to support [Blanche Lincoln] than to support [Lincoln’s] challenger and many more reasons to oppose the challenger than to oppose [Lincoln]. The balance of positive and negative messages resulted in a poll that was biased in favor of [Lincoln]. Considering all the facts and circumstances, we have concluded that your polling activities support or oppose the election of a candidate for public office.”

The IRS’s denial letter to Arkansans for Common Sense indicates the agency has not let up on its regulation of political activities by 501(c)(4) organizations, notwithstanding ongoing controversies concerning the agency’s actions in this area. Tax-exempt organizations under every section of the tax code—even 527 political organizations—must vigilantly monitor their political activities, as such activities may create tax liabilities, reporting obligations, and even existential threats to a group’s tax classification.