

Political activities: Staying on the right side of the IRS

Midterm elections are right around the corner, and the IRS has strict guidelines for what 501(c)(3) nonprofits can and cannot do during an election year. Specifically, the IRS prohibits these organizations from “participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office.” To do so could mean losing your tax-exempt status.

These prohibitions apply to all elections and all candidates at the federal, state and local levels.

Proceed with caution

Prompted by the actions of some tax-exempt charitable organizations during the 2004 election, the IRS has tightened its scrutiny of campaign activities conducted by 501(c)(3) entities. This doesn’t mean all such organizations have to avoid anything related to politics. However, it does mean you have to be careful not to cross the IRS’s line that separates acceptable from unacceptable activities.

In general, nonpartisan activities that support the overall voting process are acceptable. For instance, your not-for-profit may conduct voter registration drives or participate in nonpartisan get-out-the-vote efforts. The key word is “nonpartisan.” You must be sure your efforts are focused on encouraging voters to get to the polls without steering them to vote a particular way.

It’s also acceptable to reach out to all candidates to educate them on issues important to your organization, and participate in or sponsor a candidate forum. Be aware, though, that you’ll cross the line into unacceptable territory if your outreach or candidate forum includes some candidates, but not all.

In addition, you’re allowed to educate the public on ballot measures and continue any normal lobbying you’re already doing on issues. The IRS also allows you to rent or sell your mailing list to a political candidate if the rental or sale is done at fair market value and is made available to all candidates.

Do not attempt

Certain political activities are strictly off limits for your 501(c)(3) nonprofit to engage in, if you want to stay on the right side of the IRS.

For example, you cannot do anything that can be construed as implicitly or explicitly supporting or opposing a candidate. The IRS refers to this as political campaign intervention, and they define it as “any and all activities that favor or oppose one or more candidates for public office.” Thus, your nonprofit shouldn’t engage in the following activities:

- Making contributions to a candidate,
- Offering public statements for or against a candidate,
- Distributing materials by other organizations in support of or opposition to a candidate,
- Allowing some candidates, but not all, to use your organization’s assets or facilities, and
- Creating, funding or managing a political action committee.

Allegations of organizations running afoul of these guidelines during the 2004 election prompted the IRS to launch its Political Activities Compliance Initiative (PACI) to investigate these reports. (See the sidebar “2004 election prompts IRS scrutiny”.)

Be cautious and informed

In election years, your nonprofit has to know where to draw the line on political activities. With increased IRS scrutiny, it’s smart to be cautious and stay informed.

Sidebar: 2004 election prompts IRS scrutiny

In February 2006, the IRS issued the findings of its Political Activities Compliance Initiative (PACI). PACI was launched to investigate allegations that some 501(c)(3) organizations were engaging in prohibited campaign activities during the 2004 elections. PACI reviewed more than 160 cases in all.

According to an IRS report, 75% of the nonprofits examined had engaged in prohibited activities. Among the violations the IRS uncovered were:

- Charities encouraging or discouraging members to vote for specific candidates through printed material distributed to its members and information on their Web sites,
- Religious leaders supporting or deriding particular candidates from the pulpit, and
- Charities making monetary contributions to a candidate’s campaign.

In most cases, the IRS issued written advisories indicating that prohibited political activities had taken place, but that it was an isolated incident not requiring revocation of exempt status. Three cases resulted in the IRS recommending revocation of exempt status, and in 20 cases the allegations were unfounded.

The report strongly recommends that the IRS continue the PACI program in the 2006 election year and that it “increase its use of revocation in cases that warrant this sanction.”