

CLIENT ALERTS

It's Election Season Again (Not That You Could Avoid it!). Some Do's and Don'ts for Exempt Organizations Participating in Public Policy and Political Activities

6.16.2016

In our May 6 client alert, we described generally the restrictions on tax-exempt organizations that want to participate in public policy or political activities. As we noted in that alert, those restrictions are subjective and very fact-specific, and they apply differently to different types of tax-exempt organizations.

So what should you do if your organization wants to be involved in debates about public issues this year? What can and can't your organization do to influence political leaders and voters?

There are many ways exempt organizations can participate in public policy matters, and you can always consult with us as to specific plans you may have to assure your organizations complies with the law and preserve its tax exemption. But sometimes tax-exempt organizations would prefer to be very cautious and avoid approaching any of the restrictions. For that purpose, here are some basic rules of thumb that will aid organizations that wish to steer clear of IRS rules and regulations but still participate in public advocacy. If these rules are followed, the organization should be able to express its views, even on controversial subjects, without jeopardizing its tax-exempt status.

1. **Don't identify specific legislation in any message.** This is a simple way to avoid running afoul of lobbying restrictions on most exempt organizations. Note, though, there are several different ways to identify specific legislation, so be careful about how your organization discusses any legislative proposal. For example, the phrase "*the President's plan for a drug-free America*" might be enough to identify specific legislation if that or similar phrases have been closely linked in the past to specific legislative proposals. But that won't (and shouldn't) stop your organization from advocating

Related People

Joseph G. Cosby
Of Counsel

Related Services

Governmental
Nonprofit Organizations
Tax

CLIENT ALERTS

more general public policy goals, such as achieving a drug-free America.

2. **Don't name candidates for public office (including current office-holders) in your message.** 501 (c)(3) charities are absolutely prohibited from supporting or opposing candidates for election to public offices, and many other types of exempt organizations are restricted from these activities. Keeping politicians' names out of any message goes a long way to protecting exempt status.
3. **Don't concentrate your activities too close to any election.** Both the IRS and the Federal Election Commission consider how much time is left before an election when the organization delivers its message. Although they weigh this factor differently, it can be important to show that your organization's message is part of your ongoing campaign tied to promoting your purposes and mission, not a short-term spurt of activity near an election.
4. **Deliver the same message over the geographic area you serve, not just in areas where there might be an issue in an upcoming election.** For instance, if your position could be construed as targeting an upcoming local election, don't deliver the message only in that area, but make it part of your overall message to the areas you serve.
5. **Never give free or discounted information or services to a candidate that your exempt organization provides at a market rate to someone else.** This could be regarded as a subsidy or indirect endorsement of a candidate.
6. **Whatever your tax-exempt organization offers or provides should be made available on equal terms to all other candidates for the same public office.** Otherwise, the IRS might interpret your activities as partisan and penalize your organization. For instance, allowing a candidate to rent your facility for an event would be permissible, but only if you likewise make it available to other candidates or for other events as well.
7. **Don't invite a politician seeking election to address your tax-exempt organization without obtaining legal advice.** There is nothing wrong with having anyone, including a politician seeking election, come and address your group, and many charities and other exempt organizations do exactly that every year. But the rules can easily tangle up an organization with the best intentions. A small investment in legal advice could save your organization much grief and legal expenses later.
8. **Be cautious about mentioning voting in an upcoming election.** There are many ways an exempt organization can legally encourage citizens to vote, and many charities and other exempt organizations engage in these activities in every election cycle. Exempt organizations may be allowed to operate voter registration drives, distribute voter guides, and engage in other activities to encourage people to vote. But the rules governing these activities make it wise for you to obtain legal advice before launching such a program.
9. **Be careful what you put on your website and what your website links to.** You are not prohibited from linking to sites with content concerning legislation or political candidates, but the rules get more complicated if you do. The simplest approach is to avoid linking to any sites that could include political content. In most cases, your link is safe as long as the page it links to directly is free of lobbying or political campaign references. Otherwise, seek legal advice. By the way, similar precautions should be used for information presented or referenced in the organization's

CLIENT ALERTS

newsletters or other printed material.

10. **Education about your purpose and mission can be important.** Wherever possible, the exempt organization should phrase messages in terms that are as educational as possible. This helps the organization keep its communications consistent and in line with its underlying purpose and mission, and helps the organization avoid having its conduct questioned about being too political.

Organizations that know and understand the rules of the road can actively participate in the political process without undermining their tax exempt status. If you have questions regarding the rules on lobbying and political activity for your tax-exempt organization, please contact your regular Butzel Long attorney, a member of the Butzel Long Nonprofit Organizations group, or the authors of this alert.

Joseph Cosby

Washington, D.C.

202.454.2880

cosby@butzel.com

Mark R. Lezotte

Detroit, MI

313.225.7058

lezotte@butzel.com