



Sorting Out the New Political Activities Requirements

By Bruce R. Hopkins

In the face of an election year, the IRS has issued two significant (and lengthy) revenue rulings pertaining to political activities by tax-exempt organizations. One provides guidance for determining when expenditures by exempt organizations for issue advertising are taxable as political expenditures pursuant to the political organizations rules (Rev. Rul. 2004-6). The other offers clarification of the reporting and disclosure requirements for exempt political organizations (Rev. Rul. 2003-49).

Clearing the Confusion

Generally, to be tax-exempt, a political organization (an IRC § 527 entity) must provide notice of its formation to the IRS on Form 8871. To be exempt from the outset, this notice must be given within 24 hours of formation. The following are not required to file the notice:

- A person required to report under the Federal Election Campaign Act as a political committee
- A political committee of a state or local candidate
- A state or local committee of a political party
- An organization that reasonably anticipates its annual gross receipts will always be less than \$25,000
- Another type of tax-exempt organization

A Filing Frenzy

A tax-exempt political organization is required to report, periodically, certain contributions it receives and

expenditures it makes. Depending on the circumstances, these reports are due monthly, quarterly or semi-annually using Form 8872. Political organizations not required to file this form are:

- those exempt from filing Form 8871, and
- qualified state or local political organizations.

A political organization (whether or not tax-exempt) with taxable income in excess of a \$100 specific deduction is required to file an annual income tax return using Form 1120-POL.

An exempt political organization (other than a qualified state or local political entity) with at least \$25,000 in annual gross receipts must file an annual information return using either Form 990 or 990-EZ. Qualified state or local political organizations are required to file this return if they have annual gross receipts of \$100,000 or more.

Entities that do not have to file are:

- those below the \$25,000 threshold,
- those that are not required to file a Form 8871, and
- a caucus or association of state or local officials.

An *exempt function*, for purposes of the political organizations rules, means influencing or attempting to influence the selection, nomination, election or appointment of an individual to a public office or office in a political organization, or the election of residential or vice-presidential electors.

Generally, a tax-exempt organization that wishes to engage in an exempt function may do so with its own funds or by means of a separate political organization. If the latter approach is taken, the foregoing rules apply. Also, political organizations are taxable on their non-exempt function net income. With the former approach, the exempt organization is likely to have to file an annual information return, but the other notice and reporting requirements are inapplicable. Nonetheless, the organization is subject to tax on expenditures for an exempt function.

Practitioners should carefully review the IRS's guidance for determining when an expenditure by a tax-exempt

organization for an advocacy communication relating to a public policy issue is for an exempt function. Some tax-exempt organizations are going to be surprised to discover that what they thought was advocacy only in the form of attempts to influence legislation is also advocacy in the form of political activity.