



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

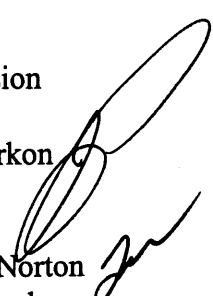
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MEMORANDUM


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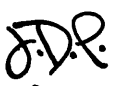
**TO:** The Commission


**THROUGH:** James A. Pehrkon   
Staff Director

**FROM:** Lawrence H. Norton   
General Counsel

Rosemary C. Smith   
Associate General Counsel

Mai T. Dinh   
Acting Assistant General Counsel

J. Duane Pugh Jr.   
Senior Attorney

Daniel E. Pollner   
Attorney

**SUBJECT:** Internal Revenue Service documents cited in Agenda Document  
No. 04-20

**AGENDA ITEM**  
For Meeting of: 03-04-04

**SUBMITTED LATE**

Attached are copies of three Internal Revenue Service documents that are cited in the draft Notice of Proposed Rulemaking on "Political Committee Status," which is Agenda Document No. 04-20.

Document	Cited in draft NPRM	Attached pages
Rev. Rul. 2004-6	page 29, line 4	1-9
Tech. Adv. Mem. 89-36-002	page 27, line 5	10-24
Priv. Ltr. Rul. 99-25-051	page 19, line 17	25-36

Attachment

Citation Found Document Rank 1 of 1 Database  
 Rev. Rul. 2004-6 FTX-RR  
 2004-4 I.R.B. 328, 2003 WL 23009324 (IRS RRU)

**C**

Internal Revenue Service (I.R.S.)

Revenue Ruling

PUBLIC ADVOCACY; PUBLIC POLICY ISSUES

Released: December 24, 2003

Published: January 26, 2004

Section 527.--Political Organizations, 26 CFR 1.527-2: Definitions.

(Also § 501.)

Public advocacy; public policy issues. This ruling concerns certain public advocacy activities conducted by social welfare organizations, unions, and trade associations. The guidance clarifies the tax implications of advocacy that meets the definition of political campaign activity.

Public advocacy; public policy issues. This ruling concerns certain public advocacy activities conducted by social welfare organizations, unions and trade associations. The guidance clarifies the tax implications of advocacy that meets the definition of political campaign activity.

Organizations that are exempt from federal income tax under § 501(a) as organizations described in § 501(c)(4), § 501(c)(5), or § 501(c)(6) may, consistent with their exempt purpose, publicly advocate positions on public policy issues. This advocacy may include lobbying for legislation consistent with these positions. Because public policy advocacy may involve discussion of the positions of public officials who are also candidates for public office, a public policy advocacy communication may constitute an exempt function within the meaning of § 527(e)(2). If so, the organization would be subject to tax under § 527(f).

#### ISSUE

In each of the six situations described below, has the organization exempt from federal income tax under § 501(a) as an organization described in § 501(c)(4), § 501(c)(5), or § 501(c)(6) that engages in public policy advocacy expended funds for an exempt function as described in § 527(e)(2)?

#### LAW

Section 501(c)(4) provides exemption from taxation for civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

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Section 1.501(c)(4)-1 of the Income Tax Regulations states an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Section 501(c)(5) provides exemption from taxation for labor, agricultural, or horticultural organizations.

Section 1.501(c)(5)-1 requires that labor, agricultural, or horticultural organizations have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Section 501(c)(6) provides exemption from taxation for business leagues, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. A business league's activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Section 527 generally provides that political organizations that collect and expend monies for exempt function purposes as described in § 527(e)(2) are exempt from Federal income tax except on their investment income.

Section 527(e)(1) defines a political organization as a party, committee, association, fund or other organization (whether or not incorporated), organized and operated primarily for the purpose of accepting contributions or making expenditures, or both, for an exempt function.

Section 527(e)(2) provides that the term "exempt function" for purposes of § 527 means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. By its terms, § 527(e)(2) includes all attempts to influence the selection, nomination, election, or appointment of the described officials.

Section 527(f)(1) provides that an organization described in § 501(c) and exempt from tax under § 501(a) is subject to tax on any amount expended for an exempt function described in § 527(e)(2) at the highest tax rate specified in § 11(b). The tax is imposed on the lesser of the net investment income of the organization for the taxable year or the amount expended on an exempt function during the taxable year. A § 501(c) organization is taxed under § 527(f)(1) only if the expenditure is from its general treasury rather than from a separate segregated fund described in § 527(f)(3).

Section 527(f)(3) provides that if an organization described in § 501(c) and exempt from tax under § 501(a) sets up a separate segregated fund (which segregates monies for § 527(e)(2) exempt function purposes) that fund will be treated as a separate political organization described in § 527 and, therefore, be subject to tax as a political organization under § 527.

Section 527(i) provides that, in order to be tax-exempt, a political organization is required to give notice that it is a political organization

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described in § 527, unless excepted. An organization described in § 501(c) that does not set up a separate segregated fund, but makes exempt function expenditures subject to tax under § 527(f) is not subject to this requirement. § 527(i)(5)(A).

Section 527(j) provides that, unless excepted, a tax-exempt political organization that has given notice under § 527(i) and does not timely make periodic reports of contributions and expenditures, or that fails to include the information required, must pay an amount calculated by multiplying the amount of contributions and expenditures that are not disclosed by the highest corporate tax rate. An organization described in § 501(c) that does not set up a separate segregated fund, but makes exempt function expenditures subject to tax under § 527(f), is not subject to the reporting requirements under § 527(j).

Section 1.527-2(c)(1) provides that the term "exempt function" includes all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization. Whether an expenditure is for an exempt function depends on all the facts and circumstances.

Section 1.527-6(f) provides that an organization described in § 501(c) that is exempt under § 501(a) may, if it is consistent with its exempt status, establish and maintain a separate segregated fund to receive contributions and make expenditures in a political campaign.

Rev. Rul. 2003-49, 2003-20 I.R.B. 903 (May 19, 2003), discusses the reporting and disclosure requirements for political organizations in question and answer format. In Q&A-6, the ruling holds that while a § 501(c) organization that makes an expenditure for an exempt function under § 527(e)(2) is not required to file the notice required under § 527(i), if the § 501(c) organization establishes a separate segregated fund under § 527(f)(3), that fund is required to file the notice in order to be tax-exempt unless it meets one of the other exceptions to filing.

Certain broadcast, cable, or satellite communications that meet the definition of "electioneering communications" are regulated by the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81. An exempt organization that violates the regulatory requirements of BCRA may well jeopardize its exemption or be subject to other tax consequences.

#### ANALYSIS OF FACTUAL SITUATIONS

An organization exempt from federal income tax under § 501(a) as an organization described in § 501(c) that, consistent with its tax-exempt status, wishes to engage in an exempt function within the meaning of § 527(e)(2) may do so with its own funds or by setting up a separate segregated fund under § 527(f)(3). If the organization chooses to establish a separate segregated fund, that fund, unless excepted, must give notice under § 527(i) in order to be tax-exempt. A separate segregated fund that has given notice under § 527(i) is then subject to the reporting requirements under § 527(j). See Rev. Rul. 2003-49. If the organization chooses to use its own funds, the organization is not subject to the notice requirements under § 527(i) and the reporting requirements under § 527(j), but is subject to tax under § 527(f)(1) on the lesser of its investment income or the amount of the exempt function expenditure.

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All the facts and circumstances must be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527(e)(2). When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2). However, when an advocacy communication relating to a public policy issue does not explicitly advocate the election or defeat of a candidate, all the facts and circumstances need to be considered to determine whether the expenditure is for an exempt function under § 527(e)(2).

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is for an exempt function under § 527(e)(2) include, but are not limited to, the following:

- a) The communication identifies a candidate for public office;
- b) The timing of the communication coincides with an electoral campaign;
- c) The communication targets voters in a particular election;
- d) The communication identifies that candidate's position on the public policy issue that is the subject of the communication;
- e) The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is not for an exempt function under § 527(e)(2) include, but are not limited to, the following:

- a) The absence of any one or more of the factors listed in a) through f) above;
- b) The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;
- c) The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);
- d) The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and
- e) The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

In all of the situations, the advocacy communication identifies a candidate in an election, appears shortly before that election, and targets the voters in that election. Even though these factors are present, the remaining facts and circumstances must be analyzed in each situation to determine whether the advocacy communication is for an exempt function under § 527(e)(2).

Each of the situations assumes that:

1. All payments for the described activity are from the general treasury of the organization rather than from a separate segregated fund under § 527(f)(3);

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2. The organization would continue to be exempt under § 501(a), even if the described activity is not a § 501(c) exempt activity, because the organization's primary activities are described in the appropriate subparagraph of § 501(c); and

3. All advocacy communications described also include a solicitation of contributions to the organization.

Situation 1. N, a labor organization recognized as tax exempt under § 501(c)(5), advocates for the betterment of conditions of law enforcement personnel. Senator A and Senator B represent State U in the United States Senate. In year 200x, N prepares and finances full-page newspaper advertisements supporting increased spending on law enforcement, which would require a legislative appropriation. These advertisements are published in several large circulation newspapers in State U on a regular basis during year 200x. One of these full-page advertisements is published shortly before an election in which Senator A (but not Senator B) is a candidate for re-election. The advertisement published shortly before the election stresses the importance of increased federal funding of local law enforcement and refers to numerous statistics indicating the high crime rate in State U. The advertisement does not mention Senator A's or Senator B's position on law enforcement issues. The advertisement ends with the statement "Call or write Senator A and Senator B to ask them to support increased federal funding for local law enforcement." Law enforcement has not been raised as an issue distinguishing Senator A from any opponent. At the time this advertisement is published, no legislative vote or other major legislative activity is scheduled in the United States Senate on increased federal funding for local law enforcement.

Under the facts and circumstances in Situation 1, the advertisement is not for an exempt function under § 527(e)(2). Although N's advertisement identifies Senator A, appears shortly before an election in which Senator A is a candidate, and targets voters in that election, it is part of an ongoing series of substantially similar advocacy communications by N on the same issue during year 200x. The advertisement identifies both Senator A and Senator B, who is not a candidate for re-election, as the representatives who would vote on this issue. Furthermore, N's advertisement does not identify Senator A's position on the issue, and law enforcement has not been raised as an issue distinguishing Senator A from any opponent. Therefore, there is nothing to indicate that Senator A's candidacy should be supported or opposed based on this issue. Based on these facts and circumstances, the amount expended by N on the advertisement is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 2. O, a trade association recognized as tax exempt under § 501(c)(6), advocates for increased international trade. Senator C represents State V in the United States Senate. O prepares and finances a full-page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. The advertisement states that increased international trade is important to a major industry in State V. The advertisement states that S. 24, a pending bill in the United States Senate, would provide manufacturing subsidies to certain industries to encourage export of their products. The advertisement also states that several manufacturers in State V would benefit from the subsidies, but Senator C has opposed similar measures supporting increased international

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trade in the past. The advertisement ends with the statement "Call or write Senator C to tell him to vote for S. 24." International trade concerns have not been raised as an issue distinguishing Senator C from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers.

Under the facts and circumstances in Situation 2, the advertisement is not for an exempt function under § 527(e)(2). O's advertisement identifies Senator C, appears shortly before an election in which Senator C is a candidate, and targets voters in that election. Although international trade issues have not been raised as an issue distinguishing Senator C from any opponent, the advertisement identifies Senator C's position on the issue as contrary to O's position. However, the advertisement specifically identifies the legislation O is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator C, is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by O on the advertisement is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 3. P, an entity recognized as tax exempt under § 501(c)(4), advocates for better health care. Senator D represents State W in the United States Senate. P prepares and finances a full-page newspaper advertisement that is published repeatedly in several large circulation newspapers in State W beginning shortly before an election in which Senator D is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by P on the same issue. The advertisement states that a public hospital is needed in a major city in State W but that the public hospital cannot be built without federal assistance. The advertisement further states that Senator D has voted in the past year for two bills that would have provided the federal funding necessary for the hospital. The advertisement then ends with the statement "Let Senator D know you agree about the need for federal funding for hospitals." Federal funding for hospitals has not been raised as an issue distinguishing Senator D from any opponent. At the time the advertisement is published, a bill providing federal funding for hospitals has been introduced in the United States Senate, but no legislative vote or other major legislative activity on that bill is scheduled in the Senate.

Under the facts and circumstances in Situation 3, the advertisement is for an exempt function under § 527(e)(2). P's advertisement identifies Senator D, appears shortly before an election in which Senator D is a candidate, and targets voters in that election. Although federal funding of hospitals has not been raised as an issue distinguishing Senator D from any opponent, the advertisement identifies Senator D's position on the hospital funding issue as agreeing with P's position, and is not part of an ongoing series of substantially similar advocacy communications by P on the same issue. Moreover, the advertisement does not identify any specific legislation and is not timed to coincide with a legislative vote or other major legislative action on the hospital funding issue. Based on these facts and circumstances, the amount expended by P on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

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Situation 4. R, an entity recognized as tax exempt under § 501(c)(4), advocates for improved public education. Governor E is the governor of State X. R prepares and finances a radio advertisement urging an increase in state funding for public education in State X, which requires a legislative appropriation. The radio advertisement is first broadcast on several radio stations in State X beginning shortly before an election in which Governor E is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by R on the same issue. The advertisement cites numerous statistics indicating that public education in State X is under-funded. While the advertisement does not say anything about Governor E's position on funding for public education, it ends with "Tell Governor E what you think about our under-funded schools." In public appearances and campaign literature, Governor E's opponent has made funding of public education an issue in the campaign by focusing on Governor E's veto of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State X legislature on state funding of public education.

Under the facts and circumstances in Situation 4, the advertisement is for an exempt function under § 527(e)(2). R's advertisement identifies Governor E, appears shortly before an election in which Governor E is a candidate, and targets voters in that election. Although the advertisement does not explicitly identify Governor E's position on the funding of public schools issue, that issue has been raised as an issue in the campaign by Governor E's opponent. The advertisement does not identify any specific legislation, is not part of an ongoing series of substantially similar advocacy communications by R on the same issue, and is not timed to coincide with a legislative vote or other major legislative action on that issue. Based on these facts and circumstances, the amount expended by R on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

Situation 5. S, an entity recognized as tax exempt under § 501(c)(4), advocates to abolish the death penalty in State Y. Governor F is the governor of State Y. S regularly prepares and finances television advertisements opposing the death penalty. These advertisements appear on several television stations in State Y shortly before each scheduled execution in State Y. One such advertisement opposing the death penalty appears on State Y television stations shortly before the scheduled execution of G and shortly before an election in which Governor F is a candidate for re-election. The advertisement broadcast shortly before the election provides statistics regarding developed countries that have abolished the death penalty and refers to studies indicating inequities related to the types of persons executed in the United States. Like the advertisements appearing shortly before other scheduled executions in State Y, the advertisement notes that Governor F has supported the death penalty in the past and ends with the statement "Call or write Governor F to demand that he stop the upcoming execution of G."

Under the facts and circumstances in Situation 5, the advertisement is not for an exempt function under § 527(e)(2). S's advertisement identifies Governor F, appears shortly before an election in which Governor F is a candidate, targets voters in that election, and identifies Governor F's position as contrary to S's position. However, the advertisement is part of an ongoing series of



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substantially similar advocacy communications by S on the same issue and the advertisement identifies an event outside the control of the organization (the scheduled execution) that the organization hopes to influence. Further, the timing of the advertisement coincides with this specific event that the organization hopes to influence. The candidate identified is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by S on the advertisements is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 6. T, an entity recognized as tax exempt under § 501(c)(4), advocates to abolish the death penalty in State Z. Governor H is the governor of State Z. Beginning shortly before an election in which Governor H is a candidate for re-election, T prepares and finances a television advertisement broadcast on several television stations in State Z. The advertisement is not part of an ongoing series of substantially similar advocacy communications by T on the same issue. The advertisement provides statistics regarding developed countries that have abolished the death penalty, and refers to studies indicating inequities related to the types of persons executed in the United States. The advertisement calls for the abolishment of the death penalty. The advertisement notes that Governor H has supported the death penalty in the past. The advertisement identifies several individuals previously executed in State Z, stating that Governor H could have saved their lives by stopping their executions. No executions are scheduled in State Z in the near future. The advertisement concludes with the statement "Call or write Governor H to demand a moratorium on the death penalty in State Z."

Under the facts and circumstances in Situation 6, the advertisement is for an exempt function under § 527(e)(2). T's advertisement identifies Governor H, appears shortly before an election in which Governor H is a candidate, targets the voters in that election, and identifies Governor H's position as contrary to T's position. The advertisement is not part of an ongoing series of substantially similar advocacy communications by T on the same issue. In addition, the advertisement does not identify and is not timed to coincide with a specific event outside the control of the organization that it hopes to influence. Based on these facts and circumstances, the amount expended by T on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

#### HOLDINGS

In Situations 1, 2, and 5, the amounts expended by N, O, and S are not exempt function expenditures under § 527(e)(2) and, therefore, are not subject to tax under § 527(f)(1). In Situations 3, 4, and 6, the amounts expended by P, R and T are exempt function expenditures under § 527(e)(2) and, therefore, are subject to tax under § 527(f)(1).

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Judith E. Kindell of Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, contact Judith E. Kindell at (202)

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283-8964 (not a toll-free call).

Rev. Rul. 2004-6, 2004-4 I.R.B. 328, 2003 WL 23009324 (IRS RRU)

END OF DOCUMENT

Citation  
TAM 8936002

Search Result

Rank 2 of 2

Database  
FTX-ALL

1989 WL 596078 (IRS TAM)

(Publication page references are not available for this document.)

**C**

Internal Revenue Service (I.R.S.)

Technical Advice Memorandum

Issue: September 8, 1989

Section 501 -- Exemption From Tax on Corporations, Certain Trusts, etc. (Exempt v. Not Exempt)

- 501.00-00 Exemption From Tax on Corporations, Certain Trusts, etc. (Exempt v. Not Exempt)
- 501.03-00 Religious, Charitable, etc., Institutions and Community Chest
- 501.29-00 Legislative and Political Propaganda Activities

Section 511 -- Tax on Unrelated Business Income of Charitable, etc, Organizations (Taxable v. Not Taxable)

- 511.00-00 Tax on Unrelated Business Income of Charitable , etc., Organizations (Taxable v. Not Taxable)

Section 4911 -- Tax on Excess Expenditure to Influence Legislation

- 4911.00-00 Tax on Excess Expenditures to Influence Legislation

District Director: \* \* \*  
 Taxpayer's Name: \* \* \*  
 Taxpayer's address: \* \* \*  
 Taxpayer's Identification: \* \* \*  
 Years Involved: \* \* \*  
 Date of Conference: \* \* \*

LEGEND:

A = \* \* \*  
 B = \* \* \*  
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 D = \* \* \*  
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 F = \* \* \*  
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 X = \* \* \*

ISSUES

TAM 8936002

(Publication page references are not available for this document.)

1. Did the advertising campaign sponsored by C, a project of A, to coincide with the 1984 Presidential debates constitute intervention in a political campaign, and if so, whether A's exempt status under section 501(c)(3) of the Internal Revenue Code should be revoked?

2. To what extent has A incurred lobbying expenditures under sections 501(h) and 4911 of the Code where it funds projects that make lobbying expenditures, even though the funding approval stated that the grants could not be used for lobbying activities that would be taxable expenditures under section 4945?

3. Was administration of donor advised funds related to A's exempt purpose, or did it primarily serve the personal needs of the donors? If not related, do the fees received by A for administering such funds constitute receipts from an unrelated trade or business subject to tax under section 511 of the Code?

## FACTS

## GENERAL

A was incorporated in 1970 for charitable and educational purposes, including the improvement of the conditions of the poor, the underprivileged, the consumer, and the alienated. A was recognized as exempt from federal income tax under section 501(c)(3) of the Code and classified as other than a private foundation because it was described in section 170(b)(1)(A)(vi). In 1982, A submitted Form 5768 to the IRS to elect to make expenditures to influence legislation in accordance with section 501(h).

Since its inception, A has worked for social justice and peace by supporting grass roots groups and building citizens' movements. It identifies effective local, state, regional, and national organizations and provides them with the financial and technical assistance necessary to succeed. It also supports the development of coalitions toward the goal of building national constituencies for change. A is committed to the idea of access for all people to the decision-making processes that determine public policy in order to lessen the social and economic injustices faced by the most excluded in our society.

A's interests and employees are spread throughout the United States. The National Office, located in Washington, D. C., has the overall administrative responsibility, provides assistance to projects which are national in scope, coordinates the flow of information between field representatives and the Board, and raises A's general operating budget. The field operation is decentralized with seven field representatives and three grant administrators. The field representatives travel throughout their regions identifying significant projects and determining the most appropriate form of support.

A's strategy for supporting grassroots citizen activism is stated as follows:

- (a) to make small direct seed grants to local efforts;
- (b) to provide technical assistance in program planning, fundraising, bookkeeping, and general organizational development;
- (c) to advocate for its projects with funders and help them gain access to additional sources of support;
- (d) to provide tax-exempt sponsorship and fiscal management for its projects;
- (e) to act as networkers and convenors to bring groups together;

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(Publication page references are not available for this document.)

(f) and to provide services to funders, including foundations, religious sources, individuals, and several anonymous donor advised funds that they consult and manage through the National Office.

In the minutes of the June 1984, Board of Directors meeting, it was pointed out that A has changed its emphasis from supporting emerging local groups, to funding already established, more sophisticated organizations. The basis for evaluation of projects was more focused on the political context and interrelationship between local and national policy goals. It was recommended that A maintain its emphasis on helping local constituencies win local victories that can affect change in the larger political direction of the country.

A works with approximately 200 organizations each year. Some grants are made to other qualified 501(c)(3) organizations, but the majority of the funding goes for projects which A oversees. A encourages groups to define their own goals and then assists them in making those goals manageable. Prior to receiving funding, each project submits a grant request to A which states its objectives and the amount of money needed. The grants are reviewed by both the field personnel and the National Office. When a grant has been approved, A issues a letter of understanding to the project which states that in utilizing the funds the project will be required to comply with the provisions of section 4945 of the Code. Once a project is approved, A distributes the funds piece-meal. Each project is required to submit a monthly report of its expenditures which are monitored by A. A solicits support for these projects and records the receipts and expenditures on its Form 990. In addition to the monthly reports, the field representatives monitor the project activities with on-site visits. The projects are also required to submit copies of all publications, news releases, brochures, reports, etc. to A.

The day-to-day operations of the projects are managed by their organizers who are treated by A as consultants.

#### POLITICAL CAMPAIGN ISSUE:

A's national program priorities in 1984 were in the areas of voter registration/political empowerment, Central America, and the economy. 1984 was a presidential election year with Walter Mondale running against Ronald Reagan. War and peace matters were major campaign issues.

In January 1984, A signed an agreement to sponsor B as one of its projects. B's goals were as follows:

- (a) to use the spotlight of the 1984 campaign to educate the citizens about peace and arms control issues by injecting these issues into Congressional and Presidential races;
- (b) to effectively define the war and peace issues as they would be discussed in Congressional and Presidential races in 1984;
- (c) to give support and momentum to local activists working for peace in 1984 through highly evocative and visible TV and radio ads, print advertising, 'outdoor' advertising, and cohesive literature products to permit the 'whole' activist community to be stronger than its individual organizing parts; and
- (d) to apply professional media tools for the arms control community to better communicate the messages of peace in media terms the public is accustomed

TAM 8936002

**(Publication page references are not available for this document.)**

to: TV, radio, popular magazines, daily newspapers, and in outdoor advertising such as billboards and transit ads.

A committee of ten representatives of activist organizations, including one from A, was established to monitor and evaluate the progress and activities of B. All items for publication were to be submitted to A for approval prior to publication. Effective August 1, 1984, B's name was changed to A/C (hereinafter C).

C expended approximately \$250x on a TV and radio ad campaign designed to run adjacent to the presidential campaign debates between Mondale and Reagan. The ads stressed the liberal posture on such war and peace issues as nuclear war, the defense budget, and 'star wars', urging listeners to get involved with rallying calls such as the following:

(a) 'Think about it when you vote this November. . . . America can change course. . . . the choice is ours.'

(b) 'Let's choose leaders who will lead us away from a nuclear nightmare not into one.'

(c) 'When I hear talk of winnable nuclear war, of doubling the defense budget, of spending billions to turn the heavens into a battleground, I don't like it.'

(d) 'This November. . . . vote. . . . Our future depends on it.'

(e) 'Choice is ours this fall. . . . Something has to change. . . . Let's lead America away from a nuclear war not into one.'

By October 1984, the ads had one slogan change. The ads now used the slogan 'This November. . . . Join the Debate. . . . Our future depends on it.' This was apparently done in an attempt to satisfy A's objectives without violating the political campaign proscription under section 501(c)(3) of the Code. However, the transcripts of the ads, and other materials, which were part of a package made available to local peace organizations, continued to prominently display the caption, 'vote. . . . Our future depends on it'.

According to an October 28, 1987, brief submitted by A's representatives, C was a media project created primarily to promote a peace message to the suburban white community, the 20 to 40 white male community, and the Catholic community. The project was conducted coincident with the Presidential election period because people are most likely directed to public issues at that time. Media time was purchased in 12 American media markets, including Philadelphia, the Washington D.C. area, Des Moines, and Sacramento, with a population of approximately 19.5 million. These markets were made on the 'basis of independent criteria which were solely issue-related'. However, according to C's campaign manager J, as reported in a K article, And submitted by the organization's representatives, no message was placed in the United States' largest media market, New York City, because of cost. In addition to the 12 media markets, local peace organizations requested and aired the ads in 13 states, including some of the most populous, such as Texas, Ohio, New York, California, and Georgia. Further, a number of prominent national and local peace groups utilized the ads.

The ads were mostly broadcast during a two week period a round the Reagan/Mondale foreign and defense policy debate on October 21, 1984.

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## LEGISLATIVE ACTIVITIES ISSUE:

Although the C project described above was designed with the 1984 campaign year in mind, it continued into 1985 with an advertising campaign directed toward pending legislation on the MX missile. These ads asked the listeners to contact specific Congressmen. In an internal memo, A's representative wrote to C discussing alternative ways to do lobbying since A's lobbying ability was limited under the section 501(h)/4911 lobbying parameters. In May 1985, sponsorship of C was transferred from A to D.

A funded projects that involved legislative activities and also made grants to organizations engaged in legislative activities. The following are descriptions of some of these projects and organizations:

1. An organization whose purpose was to coordinate activities among arms control and nuclear freeze groups related to issues before Congress. A included its \$64.6x grant in its section 501(h)/4911 computations as direct lobbying.

2. An organization that was intended as a short term coalition involving numerous state E grass roots organizations working on toxic waste problems. In one of its grant applications, it stated the following:

(a) Objective #2--To continue to press for a toxics control amendment to the E Air Pollution Ordinance.

(b) Objective #3--To hold a series of public meetings to force E local and state officials to take measures to face the toxic problem and commit financial resources to rectify them.

(c) Objective #4--To educate all E state legislators in an effort to influence modification of existing laws relating to the labeling, transportation, and disposal of toxic materials.

Throughout the grant proposal were the words 'to force the local government' and 'force government officials to take corrective action.' The E institutions that they targeted were the State Department of Health and Environment, the State Legislature, and the Governor's office. A summary statement reads: 'In fact, one of our program objectives, IN ADDITION TO THE PASSAGE OF LEGISLATION PROTECTING E RESIDENTS FROM TOXIC HAZARDS, is increasing the self-sufficiency and strength of the participating organizations.' A granted \$52.36x, but did not include any of this amount in its section 501(h) computation.

3. An organization that, in a memo dated December 1983, at item 4 stated: 'We have been instrumental in shaping the position of the House Subcommittee on Industrial Policy.' Under this project is a sub-project called a F Proposal. In its introductory statement, it states 'More recently, national politicians have begun to seriously debate the possibility of a national industrial policy. Legislation has been introduced in the Congress and candidates for the Presidency are now discussing these and other proposals across the country.' In Phase II of the F Project, the following was to be its political action strategy: 'The task forces--involving grass roots as well as national organizations--will be the primary means of carrying out the strategy, with the Steering Committee playing a coordinating role. The Congress and the media will be primary targets.' A granted \$102x but did not include any of it in its section 501(h) computation.

4. An organization which, in a May 1983, letter to A, from one of the directors, described a project that would be formally launched as a project of A

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as follows: 'Initial activities will include comprehensive model legislation which will incorporate 'ethics issues' as well as a plan for citizen funding of electoral campaigns. The heart of the program will be a series of working meetings with constituent leaders, legislators, campaign professionals and campaign funders in G to assess and build support for statewide campaign reform.'

In A's memo to the field offices, it states: 'This project is conceived as an exploratory project to last approximately six to eight months. It is unclear what will come out of this, although there is some talk about the initiative route in G as being one possible route to advocating campaign reform. We will not be involved after the exploratory phase, particularly if the recommended course of action is an initiative.'

In a July 1983, A document, it states that the Model Legislation was recently filed with the Attorney General. In September of 1983, A sent two letters to this organization expressing concern over some publicity items. It states, in part, 'While A could claim a portion of that activity against our lobbying exemption, we have not concluded the negotiations to use any of it for the purpose of an initiative. More importantly I am concerned that the publicity is putting private foundation support of the project at risk.'

A advised this organization of its concern over remarks made by its spokesperson. It stated 'for the record, the conditions of our grant specifically state that any form of lobbying either direct or grass roots, is not allowed.' However, there was no indication of any further action taken by A on this issue. A contributed \$56.8x but did not include any of this amount in its section 501(h) computation.

5. An organization which, in its funding request to A in March 1983, included these statements:

'This grant is to support I's organizing in support of a nuclear freeze vote in the U.S. House. This grant will allow the organization to send a mailing to over 30x interested H residents as a fundraiser. The \$13.95x will pay for the printing, bulk postage, and return postage for this mailing.'

'The contents of the mailing, sent separately to the National Office, will include two letters and an envelope requesting the recipients to: (1) make a non-deductible contribution to H Freeze Campaign, (2) volunteer time, and (3) sign messages to Congress urging support of a Congressional nuclear freeze resolution on March 8.'

'This grant of \$13.95x would be considered grass roots lobbying for IRS reporting purposes.'

In March 1983, A accepted the project with a memo which went into detail about the provisions of section 4945 of the Code. The August/September 1983, H Freeze Newsletter asked the readers to contact their legislators. A granted \$13.95x, but did not include any of this amount in its section 501(h) computation.

6. An organization whose purpose is as follows: to launch a massive national educational campaign to help reshape the terms of the debate on U.S. Policy in Central America. Main components of the project include (1) coordinating strategic planning among existing groups; (2) building a coordinated field operation to do grass roots education in key areas throughout the country; (3) initiating a coalition building process to involve new organizations; (4) producing common educational materials; and (5) developing a coordinated media



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strategy.

The strategy dated January 1984, which gives the purpose, also includes the following information:

'1984 will be a critical year with respect to U.S. policy in Central America. Following up the recommendations of the Kissinger Commission (which has attempted to build bipartisan support for the President's policy) the administration will ask Congress for massive increases in military aid to the region and expansion of CIA-supported covert war against Nicaragua. In addition, U.S. foreign policy in general, and policy in Central America in particular promise to be important issues in the 1984 presidential elections. The Congressional debate on these supplemental requests and the election campaigns will be the backdrop against which our education and organizing efforts are carried out.'

This organization's primary focus for 1985 was the proposal of a peace alternative. Instead of opposing the current policies, they proposed an alternative one. In 1985, they continued to do coordinated educational work on immediate issues, but it became a secondary focus to the work on the peace alternative. A staff person provided sample organizing materials for the local groups, including organizational resolutions, individual pledges, and petitions. They experimented with city council and state legislative resolutions, petitions to Congress and to the administration, and other organizing tools. In 1984 they published a brochure which stated, 'the U.S. is at war in Central America, but there is an alternative . . .' It indicates that the peace alternative will be a legislative package introduced in Congress early in 1985. It asks the readers to write to or visit Congressmen.

7. A agreed to act as the fiscal agent for an organization exempt under section 501(c)(4) of the Code for tax deductible grants and contributions in 1980. In 1983, A advised the organization that if it wished to continue its lobbying activities, A would no longer continue to carry it as a project. Although the activity was minor, A continued to be involved with this organization through 1985.

Inspection of A's 1983 Form 990 showed that A exceeded the grass roots lobbying limit for that year, but the Form 4720 was not timely filed. Form 4720 was filed delinquently in 1986 after requests by the examining agent.

#### DONOR ADVISED FUNDS ISSUE

In order to meet the administrative and staff needs of individual donors, A established several donor advised funds which operate similar to trust agreements established with banks. Beyond the traditional grant-making functions offered by banks, A offered donors the added benefits of a decentralized field staff and extensive experience in funding organizations.

Donor-advised funds were structured in a variety of ways. A might have received contributions on a periodic basis within a given year, contributions might have been received on an annual basis, or a single contribution might have been received in one year and spent over an agreed upon period of time. Grants were made based upon criteria (geographic preference, issue focus and priority, size of grant, etc.) mutually agreed upon by the donor and A. It was anticipated that either the donor or A would initiate grant recommendations. No grant would be

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made by A without full concurrence of the donor and A's Executive Director.

A handled all correspondence, financial record-keeping, auditing of the fund, screening of the proposals, and project evaluation. It prepared funding recommendations, quarterly, semi-annually, or annually depending upon the donor's wishes. Meetings were held at sites of choosing of the donors to review proposals. If desired, the donor traveled with field staff to visit projects.

It was understood that A would incur the costs in order to fulfill screening, grant-making, auditing, and reporting requirements. To cover these basic services, the funds were billed by A for 3% of the total annual grants to cover bookkeeping and auditing. In addition, trackable expenses--telephone, xerox, postage, travel, etc.--were billed to the funds. Some of the agreements for the donor advised funds stated that the income earned from the corpus of the fund would be applied to A. One of the agreements stated that the income would be divided equally between A and the fund. The others were silent as to interest earnings. The donors to these funds were kept anonymous by A.

A charged an administrative fee for its services. It was computed as a percentage of the amount collected. For grants solicited on behalf of a specific sponsored project, A retained seven percent while for administering donor advised funds only two to three percent was retained.

#### APPLICABLE LAW

Section 501(c)(3) of the Code, in part, provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 501(h) of the Code, in part, states that exemption of public charities electing to have this section apply to them shall be denied if a substantial part of its activities consists of carrying on propaganda, or otherwise attempting to influence legislation, but only if they normally make lobbying expenditures in excess of the lobbying ceiling amounts or normally make grass roots expenditures in excess of the grass roots ceiling amounts.

Section 4911 of the Code, in part, taxes the excess lobbying expenditures of an organization which has elected to be treated under section 501(h). The tax is on the greater of the excess lobbying expenditures or the excess grass roots expenditures.

Section 4911(d) of the Code provides that the term 'influencing legislation' means--

(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government of fiscal or employee who may participate in the formulation of the legislation.

Section 4911(e) of the Code provides that the term 'legislation' includes

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action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

Section 4945 of the Code, in part, provides a tax on taxable expenditures made by a private foundation and includes in the definition of taxable expenditures any amount paid or incurred to carry on propaganda, or otherwise attempt to influence legislation or to influence the outcome of any specific public election.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section.

Section 1.501(c)(3)-1(c)(3)(i) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if it is an 'action' organization.

Section 1.501(c)(3)-1(c)(3)(iii) of the Regulations provides that an organization is an 'action' organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term 'candidate for public office' means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements on behalf of or in opposition to such a candidate.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest.

Rev. Rul. 78-248, 1978-1 C.B. 154, describes four different organizations involved in 'voter education' activities by publishing a voter guide. The revenue ruling holds that an organization annually preparing and making generally available to the public a compilation of voting records of all Members of Congress on major legislative issues involving a wide range of subjects, containing no editorial opinion, and structuring the publication so as not to imply approval or disapproval of any Members or their voting records, is not engaged in political activity within the meaning of section 501(c)(3) of the Code. An organization sending a questionnaire to all candidates for governor in a certain State, soliciting a brief statement of candidate's position on a wide variety of issues, and publishing the responses in a voters guide generally available to the public that does not evidence a bias or preference with respect to the views of any candidate or group of candidates is not engaged in political activity within the meaning of section 501(c)(3). However, when a voters guide is distributed during an election campaign, with some questions evidencing a bias on certain issues, the revenue ruling holds that the organization is participating in a political campaign in contravention of the provisions of section 501(c)(3) and is disqualified as exempt under that section. In the fourth situation, the

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organization publishes a voter guide which is a compilation of incumbents' voting records on a particular issue (land conservation in this case) and is widely distributed among the electorate during an election campaign, the organization is participating in a political campaign in contravention of the provisions of section 501(c)(3) and is disqualified as exempt under section 501(c)(3) even though the voting guide contains no express statements in support of or in opposition to any candidate.

Rev. Rul. 80-282, 1980-2 C.B. 178, amplifies the holding of Rev. Rul. 78-248 with regard to the situations determined to be in contravention of the provisions of section 501(c)(3) of the Code. The revenue ruling describes an organization that is concerned with a broad range of issues of important social interest. The revenue ruling states that when the voting records of all incumbents are presented, candidates for reelection are not identified, no comment is made on an individual's overall qualifications for public office, no statement expressly or impliedly endorsing or rejecting any incumbent as a candidate for public office is offered, no comparison of incumbents is made, and the organization points out the inherent limitations of judging the qualifications of any incumbent on the basis of certain selected votes by stating the need to consider such unrecorded matters as performance on subcommittees and constituent service, other factors must be examined to determine whether in the final analysis the organization is participating or intervening in a political campaign. The revenue ruling holds pertinent the additional facts that the organization does not widely distribute its compilation of incumbents' voting records, but rather distributes to its normal readership who number only a few thousand nationwide (resulting in a very small distribution in any particular state or congressional district), no attempt is made to target the publication toward particular areas in which elections are occurring nor to time the date of publication to coincide with an election campaign, distinguishes the organization from the organizations described adversely in Rev. Rul. 78-248, and concluded it is not considered to be engaging in prohibited political campaign activity.

Rev. Rul. 86-95, 1986-2 C.B. 73, describes an organization engaged in the conduct of public forums involving qualified Congressional candidates. The revenue ruling states that the presentation of public forums or debates is a recognized method of educating the public. See Rev. Rul. 66-256. Providing a forum for candidates is not in and of itself, prohibited political activity. See Rev. Rul. 74-574. However, a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate. This could be done, for example, through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office.

Rev. Rul. 86-95 additionally provides that the facts and circumstances of this case establish that both the format and content of the proposed forums will be presented in a neutral manner. All legally qualified congressional candidates will be invited to participate in the forum. The questions will be prepared and presented by a non-partisan, independent panel. The topics discussed will cover a

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broad range of issues of interest to the public, notwithstanding that the issues discussed may include issues of particular importance to the organization's members. Each candidate will receive an equal opportunity to present his or her views on each of the issues discussed. Finally, the moderator selected by the organization will not comment on the questions or otherwise make comments that imply approval or disapproval of any of the candidates. In view of these facts, the organization will not be considered to be engaged in prohibited political activity.

In the case of *The Association of the Bar of the City of New York v. Commissioner of Internal Revenue* 858 F.2d 876, (2nd Cir. 1988) (Cert denied, No. 88-1053, April 17, 1989), the Court held that intervention in a campaign concerning an elective public office constituted prohibited political activity. It further stated that political intervention, even though the intentions were good and the public interest might be served, would preclude exemption under section 501(c)(3) of the Code even if it did not constitute a substantial portion of the organization's activities.

In *Kuper v. Commissioner*, 332 F. 2d 565 (2d Cir. 1964) the court stated the question as follows:

'The evidence shows that whereas an insignificant part, measured by 'women hours' of the activities of the League (of women voters) consists of writing, telegraphing or telephoning representatives in Congress and the state legislature, testifying before legislative committees and like direct efforts to influence legislative, a very substantial portion was spent in formulating, discussing and agreeing upon positions, if any, to be taken with respect to advocating or opposing various legislative measures. Whether the latter type of activity is properly considered a part of the program for influencing legislation is the question upon which the case largely turns.'

The conclusion reached by the court was that 'formulating, discussing, and agreeing upon positions' was part of the program to influence legislation, and this was true for those types of activities even where they did not lead to direct legislative action in the end.

Rev. Proc. 86-43, 1986-2 C.B. 729, sets forth criteria to determine the circumstances under which advocacy of a particular viewpoint or position on by an organization is considered educational within the meaning of section 501(c)(3) of the Code. The revenue procedure states that although the Internal Revenue Service renders no judgment as to the viewpoint or position of the organization, the Service will look to the method used by the organization to develop and present its views. The presence of any of the following factors in the presentations made by an organization is indicative that the method used by the organization to advocate its viewpoints or positions is not educational.

1. The presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications.

2. The facts that purport to support the viewpoints or positions are distorted.

3. The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations.

4. The approach used in the organization's presentations is not aimed at

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developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

The revenue procedure continues that there may be exceptional circumstances, however, where an organization's advocacy may be educational even if one or more of the factors listed above are present. The Service will look to all the facts and circumstances to determine whether an organization may be considered educational despite the presence of one or more of such factors.

The Service concluded in Rev. Rul. 67-149, 1967-1 C.B. 133, that an organization providing financial support to tax-exempt charitable organizations is itself exempt under section 501(c)(3) of the Code.

In *National Foundation, Inc. v. United States*, 87-2 USTC 9602 (Ct. Cl. 1987), the court held that an organization that seeks donors through a group of professionals and administers projects recommended by such donors and charging an administrative fee is operated exclusively for charitable purposes and not for private interests. The court found that projects were administered subject to the approval of and consistent with the organization's exempt purposes. Moreover, the organization had control over the donated funds and ensured their charitable use. Finally, the administrative costs passed on to the donor for administering a project funded by the donor's contribution were found not to result in disqualification under section 501(c)(3) of the Code.

Section 511 of the Code imposes a tax on the unrelated business taxable income of organizations described in section 501(c).

Section 512(a)(1) of the Code defines unrelated business taxable income as the gross income received by an organization from an unrelated trade or business regularly carried on by it, less allowable deductions.

Section 513 of the Code defines unrelated trade or business as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or the use it makes of the profits derived) to the exercise by such organization of its exempt functions.

Section 1.513-1(d)(2) of the regulations provides, in part, that a trade or business is related to the exempt purposes only where the conduct of the business activities has a causal relationship to the achievement of the exempt purpose. It is substantially related only if the causal relationship is a substantial one.

#### RATIONALE:

##### 1. POLITICAL CAMPAIGN ISSUE:

Although Rev. Ruls. 78-248, 80-282, and 86-95 supra, provide guidance in determining whether an activity constitutes intervention in a political campaign, the emphasis must be on the specific facts and circumstances of each case.

The C project ads were coincident with the 1984 Presidential Candidate foreign and defense policy debate on October 21, 1984, when the positions of the candidates were in national focus. Mondale was clearly perceived as the 'dovish' candidate on defense positions. On the other hand, Reagan was clearly perceived as the 'hawk', promoting defense, and supportive of the 'star wars' proposal, adversely described in C's ads.

Because of the content and timing of the C ads, it would be difficult to rate

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them as comparable to the nonpartisan voter education activities, such as the candidate forum/debates and legislative voting comparisons described in Rev. Ruls. 78-248, 80-282, and 86-95, supra. In effect, C's ad program amounted to being an adjunct of a voter education forum/debate that could be viewed as demonstrating a preference for one of the debating candidates.

Timing is often critical in determining whether any particular statement can be construed as political. The presentation of a particular viewpoint on controversial matters consistent with the criteria set forth in Rev. Proc. 86-43, supra, may be educational within the meaning of section 501(c)(3) of the Code. Public presentation by an exempt organization of such broad issues as, for example, matters involving defense, economics, or social concerns would not ordinarily be seen as affecting voters' choices in a manner contrary to the description on political activity even if they happen to coincide with or overlap a political campaign. However, the C project was timed to target specific voters on a multi-state level at the stage of a political campaign most likely to influence the decision of voters in favor of one presidential candidate over another so that the timing of the ads is one factor in determining whether the ads represent intervention in a political campaign.

After providing the editorial message, the ads originally urged viewers and listeners to: 'This November. . . . Vote. . . . Our future depends on it.' This was later changed to: 'This November. . . . Join the Debate. . . . Our future depends on it.' Either way, the message represents a clarion call to act in November, and act could readily mean vote, and, specifically, vote for a change. The candidate closely identified with the message of the ads is Walter Mondale since his candidacy would represent a change from that of Ronald Reagan.

A's representatives argue that there must be an 'express advocacy' of support (or opposition) to a clearly identified candidate, applying their interpretation of the Federal Election Case, *FEC v. Massachusetts Citizens for Life, Inc.*, 107 S. Ct. 616 (1986). We are not convinced that the Supreme Court's 'express advocacy' standard is controlling in interpreting section 501(c)(3) of the Code which provides for an absolute bar against intervening in any political campaign on behalf of (or in opposition to) any candidate for public office.

We believe that the acts of A through its C project could be viewed as sufficiently explicit to find political campaign intervention. In the set of facts before us, we do not think it was necessary for C to call the candidate by name in order to influence voters. The appeal demanded that the public vote for change rather than merely express a concern or viewpoint on issues. Thus, there is the timing of the campaign together with a public appeal to vote in a way that appears to support a specific candidate for public office that argues for finding political intervention.

A's representatives argue that the C project did not constitute political campaign intervention since it was not designed for such a purpose. According to A, the motivation behind C was to educationally involve here-to-fore uninvolved segments of the society in peace and defense issues. Other points raised by A are that most of the issue-related selected media markets were overwhelmingly for Reagan; that the coverage of areas involved less than 10 percent of the electorate; and that the election was no longer in doubt by late October, 1984.

There is evidence that refutes some of these points, such as the significant

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'local' use of the ads in many of the most populous areas of the nation; that limited coverage may have been a matter of the reality of costs, not intent; and that after the election period the C project turned into a grass roots lobbying project directed against MX missile legislation.

Educating the public is not inherently inconsistent with the activity of impermissibly intervening in a political campaign. In any bottom-line analysis, intent behind activities, even if it is laudatory, should not mitigate the reality of activities that are clearly contrary to a requirement for federal tax exemption under section 501(c)(3) of the Code. See *The Association of the Bar of the City of New York, Supra*. The C project presents a very close call because, while the ads could be viewed as focusing attention on issues of war and peace during the 1984 election campaign, individuals listening to the ads would generally understand them to support or oppose a candidate in an election campaign. The timing of the release of the ads so close to November vote, even though the reference was changed to 'join the debate', is also troublesome. Taking into account all facts and circumstances, especially that it is arguable that the ads could be viewed as nonpartisan, we reluctantly conclude A, through its C project, probably did not intervene in a political campaign on behalf of or in opposition to candidate for public office.

A's exempt status under section 501(c)(3) of the Code should not be revoked.

## 2. LEGISLATIVE ACTIVITIES ISSUE:

The information submitted does not provide a sufficiently detailed discussion on which to base technical advice on whether certain grants constitute lobbying expenditures for purposes of section 501(h) and 4911 of the Code. We suggest further development of the facts of the case. We would be happy to provide technical advice as to specific questions that may arise after further factual development.

## 3. DONOR ADVISED FUNDS ISSUE:

While the donors of donor advised funds retained some direction over and involvement in the distribution of those funds, the final decision rested with A. A received some fees and/or interest income for its involvement with these funds that may have exceeded A's costs.

Despite donor desires, none of the funds were expended for any purpose A did not approve of and agree to. The funds were solicited for activities which A, in furtherance of accomplishing its own exempt purposes, decided it wanted to fund.

There is no evidence to demonstrate that any person received a personal or private benefit as was alleged in *National Foundation, Inc., supra*, in contravention of section 1.501(c)(3)-1(d)(1)(ii) of the regulations through, for example, abusive commissions, non-charitable projects, or insider payments to donors. Moreover, A has substantial exempt activities aside from the administration of funds on behalf of donors, unlike the *National Foundation, Inc.* case. This situation is more clearly analogous to the organization described in *Rev. Rul. 67-149, supra*, in that it obtains contributions and makes distributions to qualified charities.



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We do not see donor involvement in these funds as providing anything more than incidental benefit to the donors. We further do not see A's administration of the funds as constituting unrelated trade or business.

#### CONCLUSIONS

1. The advertising campaign sponsored by C to coincide with the 1984 Presidential debates did not constitute intervention in a political campaign.
2. Additional factual development is needed to resolve this issue.
3. The administration of donor advised funds is related to A's exempt purpose and does not jeopardize A's section 501(c)(3) status. The fees received by A for administering the funds are not subject to the section 511 tax on unrelated business taxable income.

A copy of this technical advice memorandum is to be given to the organization. Section 6110(j)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this memorandum have not yet been adopted. Therefore, this memorandum and any determination letter issued on the basis of the memorandum will be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the memorandum or determination letter.

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.

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C

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: June 25, 1999

March 29, 1999

Section 527--Political Organizations

527.00-00 Political Organizations

Section 4941--Excise Taxes on Acts of Self-Dealing

4941.00-00 Excise Taxes on Acts of Self-Dealing

4941.04-00 Definition of Self-Dealing

EIN:

Dear Ladies and Gentlemen:

This is in response to your representative's letter of October 28, 1998, as revised by his submission dated December 14, 1998. You have requested rulings with respect to whether a broad range of activities, from contributions to the campaigns of certain candidates and political advertising expressly advocating the election or defeat of named candidates, to more indirect political activities such as mass media campaigns, initiative campaigns and litigation strategically aimed at altering the political process, constitute exempt functions under section 527(e)(2) of the Internal Revenue Code.

You are a nonprofit corporation, organized and operated as a section 527 political organization. You state that the main part of your program centers on issue advocacy connecting public concerns about your chosen issue to the views and records of federal, state, and local candidates and incumbents. You indicate that the political nature of your issue advocacy program is supported by your mission statement, the timing and targeting of messages, and the variety of ways in which you plan to use ballot measures and other public opinion campaigns to affect the candidate selection process.

Your program will initially focus on local, state, and federal elections in five states. The program may include the development and distribution of voter guides and voting records, mass media advertisements, grassroots lobbying, direct mail campaigns, and the active use of ballot measures, referenda, initiatives, and other public opinion campaigns, all linked to the primary purpose of influencing the political process in those states. These activities will occur over several election cycles.

You will select certain issues to emphasize based on their importance to your agenda and their expected resonance with the public. You may conduct voter

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opinion polls, focus groups, opinion research, meetings and conferences, and other related activities to determine which issues deserve special emphasis. The particular issues may vary from community to community. You plan to inject these issues into selected political campaigns for the purpose of encouraging candidates to adopt certain positions, and encouraging voters to give greater weight to certain issues when voting.

Each project you undertake is to be authorized by a resolution of your board of directors that describes the specific electoral goal of the project. The electoral goal will be substantiated in one or more of the following ways (hereinafter referred to as "substantiation methods"):

1. The written opinion of one or more experts in the fields of political science, public opinion research, or campaign strategy, indicating that the project is likely to impact the outcome of one or more elections.
2. Data collected from voter opinion polls, focus groups, demographic research, or historical voting patterns, indicating that the project is likely to impact the outcome of one or more elections.
3. The convening of project planning sessions in which campaign consultants, candidates, public officeholders, political party officials, major donors, organizational political directors, or other political functionaries participate, with the explicit understanding that the project is intended to impact the outcome of one or more elections.
4. External communications between you and third parties in which the electoral goal of the project is expressly stated, such as requests from candidates or other political functionaries asking you to undertake the project, or requests from you to third parties asking for financial support, endorsements, volunteers, or other forms of assistance to the project.
5. The use of partisan methodologies. For example: (a) presenting candidates with your agenda in a private meeting or a public event, asking for their agreement, and publicizing the results to the voters, (b) "bird-dogging" candidate appearances to ask pointed questions about their views on your issues or to show support for candidates that have adopted your agenda, and (c) engaging the services of campaign consultants and media specialists with instructions to use traditional political campaign techniques in support of the project.

You indicate that some of the materials you distribute and the techniques you use may resemble the public education, issue advocacy, or grass roots lobbying materials and techniques often used by charitable organizations without violating the political prohibition of section 501(c)(3) of the Code. However, your materials and techniques are designed to serve a primarily political purpose and will be inextricably linked to the political process, as demonstrated by the particular facts and circumstances discussed below.

#### A. Traditional candidate campaign expenditures

You plan, as a minor part of your program activities, on making expenditures reportable under the Federal Election Campaign Act and parallel state campaign finance laws. These would include contributions of cash or in-kind services to assist the campaigns of candidates in selected areas and independent expenditures expressly advocating the election or defeat of identified candidates in selected

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areas.

Section 527(e)(1) of the Code defines the term "political organization" as a party, committee, association, fund or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

Section 527(e)(2) of the Code defines the term "exempt function" to mean, in relevant part, the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected or appointed.

Section 1.527-2(c)(1) of the Income Tax Regulations provides that expenses directly related to an "exempt function," as defined in section 527(e)(2), include all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization (the selection process). Whether an expenditure is for an exempt function depends upon all the facts and circumstances. Generally, where an organization supports an individual's campaign for public office, the organization's activities and expenditures in furtherance of the individual's election or appointment to that office are for an exempt function of the organization. The individual does not have to be an announced candidate for the office. Furthermore, the fact that an individual never becomes a candidate is not crucial in determining whether an organization is engaging in an exempt function.

Contributions to candidates' campaigns and expenditures expressly advocating the election or defeat of candidates are within the meaning of "directly related" expenses in the definition of exempt function set forth in section 1.527-2(c)(1) of the regulations.

## B. Voter education linking issues with candidates

You will develop and distribute voting records and voter guides, conduct grass roots lobbying, and employ other methods of voter education using a particular approach that is distinguishable from charitable nonpartisan voter education activities permitted for section 501(c)(3) organizations. You may disseminate voter guides, voting records, grass roots lobbying messages, and other forms of voter education through television, radio, newspaper, newsletters, magazines and other print media, on-line electronic transmission, mail (including a direct mail campaign), telephone banks, facsimile transmission, posting of signs, public meetings, rallies, media events, door-to-door canvassing and other forms of direct contact with the public.

You indicate that issues will be selected based on a combination of your legislative priorities, your general public policy agenda, and public opinion research. The issues selected will encourage differentiation between candidates whose views on the identified issues agree with yours and their election opponents. Distribution of all materials and the scheduling of events will be targeted toward particular areas of the states in which you have a political

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interest and believe you can have a political impact. You will develop a list of electoral districts to be targeted, primarily for political reasons.

In addition, the various parts of the voter education element of your program will contain the following features:

1. Voter guides: Candidate information and comparisons will generally not involve submitting questions to the candidates. Other available sources of information, likely to contain some degree of bias for your positions, will be used instead. Where questionnaires are used, the questions will have a particular bias.

2. Incumbent voting records: Distribution will be geared to the timing of the specific elections and will be made to the general public or to a segment of the public targeted for political reasons. Voting records expressed in percentages, indicating the extent to which the incumbent voted in accordance with your views, may be used.

3. Grass roots lobbying: The format, timing, and targeting of these messages will reflect a dual character: calling for legislative action, but also, by strong implication, raising public awareness about how the identified legislators stand on issues that you have identified as critical and believe voters should take into account. The political character will predominate, as evidenced by the geographical targeting.

4. Other forms of voter education: Where you sponsor public events, mass media campaigns, or other types of voter education, the format, timing, and targeting will be designed to have an impact on how the public views the candidates. Each voter education project will be authorized by a resolution of your board of directors that describes the specific electoral goal and substantiated using the methods previously described.

Rev. Rul. 78-248, 1978-1 C.B. 154, and Rev. Rul. 80-282, 1980-2 C.B. 178, address the facts and circumstances that are relevant in determining when voting records and voter guides cross over the line from simply educating voters to influencing or attempting to influence their votes in the context of the section 501(c)(3) prohibition on participation or intervention in a political campaign on behalf of or in opposition to a candidate. Rev. Rul. 81-95, 1981-1 C.B. 332, refers to these two rulings in discussing what activities constitute participation or intervention in a candidate campaign for a section 501(c)(4) organization. A similar analysis may be used to determine the types of voter guides and voting records that would qualify as an exempt function activity under section 527(e)(2).

Rev. Rul. 78-248, *supra*, indicates that whether an organization is participating or intervening, directly or indirectly, in a political campaign depends upon all of the facts and circumstances. The ruling sets forth four situations with different outcomes.

Situations 1 and 4 involve compilations of officeholders' voting records. In Situation 1, the activity is permissible given the following factors: the publication contains voting records of all members of Congress on "major legislative issues involving a wide range of subjects," the publication does not imply approval or disapproval of any members or their records; and the publication is compiled annually and made available to the public. By contrast, in Situation 4, where an organization that is primarily concerned with land

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conservation issues presents incumbents' voting records only on issues of importance to the organization, and widely distributes the guide among the electorate during an election campaign, the activity is prohibited political activity even though the materials contain no express statements supporting or opposing any candidate.

Situations 2 and 3 involve publicly distributed voter guides presenting candidates' positions on the issues based on candidates' responses to a questionnaire. In Situation 2, the organization solicited from all candidates for governor a brief statement of the candidate's position on a wide variety of issues. The results then were published in a voters' guide made available to the public. The activity is permissible where the organization selects the issues "solely on the basis of their importance and interest to the electorate as a whole" and "neither the questionnaire nor the voters guide, in content or structure, evidences a bias or preference with respect to the views of any candidate or group of candidates." In Situation 3, the same questionnaire-based voter guide is considered prohibited political activity where some questions evidence a bias on certain issues.

Rev. Rul. 80-282, supra, holds that the publication of a newsletter containing voting records of congressional incumbents on selected issues would not, based on these facts, constitute participation or intervention in a political campaign within the meaning of section 501(c)(3). The ruling restates the rule that whether an organization is participating or intervening, directly or indirectly, in a political campaign depends upon all of the facts and circumstances.

In this case, the format and content were not neutral. The newsletter reported the incumbents' votes on selected issues of importance to the organization, stated the organizations' own views on the issues, and indicated whether the incumbent supported or opposed the organization's views. Weighing in favor of the conclusion that the publication of voting records did not constitute direct or indirect participation or intervention in a political campaign were the following factors: the publication presented the voting records of all incumbents and pointed out the limitations of judging qualifications based on voting records; and the publication did not identify who was running for reelection nor comment on individuals' overall qualifications for office nor expressly or impliedly endorse any incumbent nor compare incumbents with candidates. Given that the format and content was not conclusive, the determining factor was the timing and nature of the distribution. The organization did not gear the timing of the distribution to any federal election and did not target distribution to any particular areas where elections were occurring. The voting record compilation was distributed only in the organization's newsletter to its regular subscribers numbering only a few thousand nationwide.

Rev. Rul. 81-95, supra, holds that a section 501(c)(4) organization may participate or intervene in political campaigns and remain exempt under that section as long as it is primarily engaged in activities designed to promote social welfare. The ruling relies upon Rev. Rul. 78-248, supra, (pertaining to voter guides and voting records) and Rev. Rul. 80-282, supra, (pertaining to voting records), among others, as examples of what constitutes participation or intervention in political campaigns. The ruling further states that a section 501(c)(4) organization is subject to the tax imposed by section 527 on any of its

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expenditures for political activities that come within the meaning of section 527(e)(2).

The regulatory scheme under section 527 distinguishes between "nonpartisan educational workshops" which are not intended to influence the selection and election process and are not exempt function expenditures, and seminars and conferences which are intended to have a political impact and which therefore are exempt function expenditures. See section 1.527-2(a)(3) and 1.527-2(c)(5) of the regulations. Example (8), described in section 1.527-2(c)(5)(viii), relates to "Q," a political organization described in section 527(e)(2). In this example, "Q finances seminars and conferences which are intended to influence persons who attend to support individuals to public office whose political philosophy is in harmony with the political philosophy of Q. The expenditures for these activities are for an exempt function."

A close reading of the Revenue Rulings along with the section 527 regulations provides guidance as to the type of activities that constitute participation or intervention in a campaign for public office and would be considered exempt function activities.

Your publication and distribution of voter guides and voting records attempts to influence the public by linking candidates to the issues you are identified with. While both factual and educational, the selective content of this material, and the manner in which it is presented is intended to influence voters to consider particular issues when casting their ballot. The program will identify candidates whose views on selected issues are in harmony with yours.

Unlike Situation 1 of Rev. Rul. 78-248, which was deemed to be acceptable voter education for a section 501(c)(3) organization, the issues you plan to cover will be dictated by your legislative agenda, and the targeted distribution and timing of the publications will be tied to upcoming elections. As in Situation 4 of Rev. Rul. 78-248, which was deemed unacceptable for a section 501(c)(3) organization, your materials will present incumbents' voting records on selected issues matching your legislative agenda, and will, by implication, approve or disapprove an incumbent's position based on how well it matches yours. You plan to distribute this material widely to voters prior to an election. The format and content of the voting records will not be neutral. Furthermore, the key factors present in Rev. Rul. 80-282 that tipped the balance in favor of acceptable voter education under section 501(c)(3) are not present in your case. You plan to intentionally target the distribution of voter guides to areas in which your legislative agenda is thought to be critical to voters' choices, and to time those distributions throughout election cycles to maximize their impact.

A critical factor suggested by Situations 2 and 3 of Rev. Rul. 78-284 in determining whether a voter guide is nonpartisan, is whether the guide evidences a bias or preference with respect to the views of any candidate or group of candidates. Your voter guides, in which candidates' views on issues will be compiled without contacting the candidates themselves, are intended to evidence a bias on the issues, in the selection of the issues, in the language used in characterizing the issues, and in the format. As with the voting records, the targeting and timing of the distribution will be aimed at influencing the public's judgment about the positions of the candidates on issues at the heart of your legislative agenda.

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Based on the factors identified in the revenue rulings, your preparation and distribution of voter education material, including voter guides and voting records, would be prohibited political intervention for a section 501(c)(3) organization and would be a non-qualifying activity for a section 501(c)(4) organization. Because these activities serve a political purpose, they are for an exempt function within the meaning of section 527(e)(2).

The content, timing, and targeting of your grassroots lobbying reflects a dual character: calling for legislative action, and raising public awareness about how the identified legislators stand on issues that you believe voters, based on opinion polling, will take into account during the election cycle. The repeated public presentations on selected issues, targeted to geographical areas and timed to coincide with the election, together with legislators' positions on those issues as compared with your views, is intended to have an effect on how the public will judge the positions of the incumbents and their challengers in the election. The link between these issues and the various candidates will be reinforced through your publication of voting records and voter guides. Because these activities serve the purpose of influencing the election of certain individuals to Federal, State, or local office, they are for an exempt function within the meaning of section 527(e)(2).

Based on the specific facts and circumstances described above, your expenditures for voter education activities, including the preparation and distribution of voter guides, voting records, grass roots lobbying, and your sponsorship of debates, public events, and other forms of voter education targeted and timed to influence candidate elections are expenditures for an exempt function within the meaning of section 527(e)(2) of the Code.

### C. Voter activation expenditures

You have indicated you may engage in the following activities:

- i. Voter registration targeted to reach groups selected because they are likely to vote for candidates favoring your legislative agenda.
- ii. Voter turnout activities, including promotion of absentee voting, get-out-the-vote mobilizations, and identification of voters likely to agree with your legislative agenda.
- iii. Computerized enhancement of voter information in order to target voters likely to agree with your legislative agenda.

You state that these activities differ from voter registration and voter turnout activities sponsored by charitable section 501(c)(3) organizations due to the intentional and deliberate targeting of individual voters or groups of voters on the basis of their expected preference for pro-issue candidates, as well as the timing of dissemination and format of the materials used. Each voter activation project will be authorized by a resolution of your board of directors which describes the specific electoral goal of the project. Various substantiation methods, as previously described, may be used, or you may use a partisan methodology in the operation of the project, such as close coordination with various candidate, party, and political action committee representatives.

Section 1.527-6(b)(5) of the regulations provides that to be nonpartisan, voter registration and 'get-out-the-vote' campaigns must not be specifically identified



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by the organization with any candidate or political party. Expenditures for such nonpartisan activities are not expenditures for an exempt function.

The voter activation expenditures you have described are partisan in nature. While these activities may not be specifically identified with a candidate or party in every case, they are partisan in the sense that you intend to use these techniques to increase the election prospects of pro-issue candidates as a group. Expenditures for these activities are for an exempt function under section 527(e)(2).

#### D. Ballot measure activities

In your opinion, ballot measures are a very important part of the political process in the five states you have initially targeted. You contemplate the following range of activities:

(i) Campaigning for or against issue-related ballot measures already linked to the public images of specific candidates or public officials.

In this regard, you may support a pro-issue ballot measure sponsored by and identified with a particular candidate or officeholder. In other cases, you may oppose a ballot measure that threatens your values and is associated with a candidate or officeholder. Either way, you state that your efforts will be inseparably linked to enhancing or detracting from the public image of a candidate running in the same election or a public officeholder expected to run for re-election or election to another office. Through the ballot measure, you will attempt to reinforce the significance of the person's pro-issue or anti-issue stance in the minds of the voters.

(ii) Campaigns on a ballot measure for the primary purpose of causing candidates to take a visible public stand on the measure, thereby affecting a larger number of candidate races through focused expenditures.

Your use of ballot measures to promote differentiation between pro-issue candidates and their opponents in the minds of the voters may take different forms. You may attempt to cause one or more candidates or public officials to endorse or oppose a ballot measure on issue-related grounds, either by direct contact with the candidate or official, by pressure applied through the media and opinion-makers, or by encouraging the public to ask the candidates or officials to take a stand on the measure. In other situations, you may support or oppose a ballot measure as an economical way of influencing a large number of contemporaneous candidate races, through communications that identify the candidates who are for, against, undecided, or neutral on the measure. You indicate that this will maximize the use of your resources by influencing the election of many candidates, rather than being limited to intervention in the campaign of a single candidate. Your plan to use the ballot measure process to set the stage for political debate and to impact how voters identify candidates sympathetic to your views.

You also indicate that you will select initiative campaigns as a means by which voters can hold the legislature accountable on matters impacting your issue. Ballot measures, referenda, and initiatives appeal to the people to act as legislators, in those cases where the legislature has not acted. The success or failure of an initiative may express the voting public's assessment of the

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performance of a particular legislator or the legislature as a whole, whether negative or positive. By highlighting the actions or inaction of specific incumbents through the ballot measure process, you will link your issue to the performance of the legislature in the minds of voters, thereby affecting the voters' decisions during election cycles.

(iii) Ballot measure activities aimed at affecting the resources available to pro-issue candidates or their opponents, ranging from sympathetic voter identification and computerized list enhancement to more tactical techniques, such as pursuit of diversionary campaigns that may lessen the contributions available to opposing candidates.

In this regard, you anticipate developing resources transferable to pro-issue candidates, including petition lists, donor lists, mailing and telephone lists identifying pro-issue voters and enhanced with voter frequency data, as well as trained campaign operatives, issue analysis, opposition research, polling data, advertising themes, and other campaign assets. You plan, over time, to make these resources available to pro-issue candidates and their supporters.

Through ballot measure campaigns you anticipate affecting the patterns of donor support to candidates. By publicizing the connections among issues, donors, and candidates, you can impact donor contribution patterns, either increasing giving by donors to candidates who want to be identified with your issue, or deterring giving by donors who do not want their reputations tarnished by identification with a particular issue. Alternatively, the identification of donors with a particular measure--whether positive or negative--can promote or deter a candidate's acceptance of contributions from those same donors. In these ways, a ballot measure's impact on donor patterns can affect the amount of funds that are available to a particular candidate or group of candidates and influence the outcome of a political campaign.

You may also participate in ballot measure campaigns that have the effect of redirecting resources from candidates and groups of candidates by affecting the way those who engage in partisan politics spend their money. The presence of a controversial measure during an election cycle can divert contributions from candidate campaigns to initiative campaigns, funds that would have otherwise been spent to support or oppose candidates.

Finally, you expect to closely coordinate certain ballot measure campaign activities with the campaigns of candidates in the same elections. The degree of coordination is expected to result, in some cases, in a level of in-kind support regarded as a reportable campaign contribution to the candidate under state or federal campaign finance laws.

(iv) Ballot measure campaigns where the measure itself would affect the future prospects of pro-issue candidates, such as term limits, redistricting, campaign finance reform, etc.

You may choose to participate in ballot measures that would alter significantly the rules of the election process in a manner favorable or unfavorable to pro-issue candidates. Such measures affect the election process directly, for example, by imposing term limits, causing the reapportionment of legislative districts, changing the primary election system, or instituting campaign reforms relating to the sources and amounts of political contributions a candidate may receive.

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(v) Campaigns on ballot measures for the primary purpose of increasing the turnout of voters likely to vote for identified pro-issue candidates.

You may engage in ballot measure campaigning for the political purpose of increasing pro-issue voter turnout. Voters who might otherwise stay at home may turn out to vote if a measure affecting their vital interests is on the ballot. The measure itself may or may not be related to your identified issue, but will be aimed at a demographic group that you expect to vote for pro-issue candidates.

In all five types of ballot measure activity you have described, you distinguish your activities from those commonly engaged in by section 501(c)(3) public charities, section 501(c)(4) social welfare groups, and other section 501(c) organizations. You state that each ballot measure project will be authorized by a resolution of your board of directors describing the specific electoral goal of the project. Various substantiation methods, as previously described, will be used, or you will use one or more partisan methodologies, such as presenting one or more candidates in a favorable or unfavorable light as supporters or opponents of the measure, close coordination with various candidate, party, and political action committee representatives, or engaging the services of campaign consultants or media specialists with instructions to use traditional political campaign techniques in support of the project.

Section 1.527-2(c)(1) of the regulations provides that expenses directly related to an "exempt function," as defined in section 527(e)(2), include all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization. Whether an expenditure is for an exempt function depends upon all the facts and circumstances.

Generally, expenditures made in connection with ballot measures, referenda, or initiatives are not section 527 exempt function expenditures. Nevertheless, a political organization may support or oppose ballot measures provided that such activities are not its primary activity. Furthermore, such expenditures will be considered for an exempt function where it can be demonstrated that such expenditures were part of a deliberate and integrated political campaign strategy to influence the election for state and local officials by making active use of ballot measures, referenda, and initiative campaigns. You have indicated that your participation in such campaigns is for the purpose of linking candidates, in the minds of voters, to positions on certain issues within your identified area of interest, and encouraging voters to give greater weight to these issues when making judgments about candidates.

You state that your purpose in engaging in such activities is a political one. Based on the particular facts and circumstances described above, it appears that the described activities are inseparable from the candidate selection process. Under the circumstances you describe, expenditures for these activities are primarily for an exempt function within the meaning of section 527(e)(2) of the Code. As noted, our ruling is based upon the specific facts and circumstances you have described and may not apply to your participation in a ballot measure where these facts and circumstances are not present.

#### E. Litigation

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You further propose to initiate or subsidize litigation directed to influencing the selection of pro-issue candidates. This may include lawsuits to force or resist a recount, to attack or defend a contestant accused of violating election laws, or to invalidate or uphold a ballot measure linked to the candidate selection process. This would not include litigation or legal costs related solely to the personal affairs of a candidate, but might include litigation on a matter affecting the public's perception of the candidate or office-holder's fitness for public office with respect to his/her conduct of official governmental functions.

Each litigation project will be authorized by a resolution of your board of directors describing the specific electoral goal of the project. One or more substantiation methods, as previously described, may be used or you may use a partisan methodology in the selection of the project, such as legal representation of or close coordination with various candidate, party, and political action committee representatives.

Section 527(e) (2) of the Code defines the term "exempt function" to mean the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).

Rev. Rul. 74-394, 1974-2 C.B. 40, considers whether legal fees paid by a state judge for services rendered in connection with his defense of misconduct charges were deductible under section 162(a) of the Code. A state commission charged the judge with lending the prestige of his office to advance the private commercial interests of others. The commission could have censured the judge or removed him from office. The revenue ruling concludes that since the charges had their origin in the conduct of the judge's official duties, the expenses for the legal fees were deductible as ordinary and necessary business expenses.

Litigation to force or resist a recount, to attack or defend a contestant accused of violating election laws, or to invalidate or uphold a ballot measure linked to the candidate selection process, falls within the meaning of attempting to influence the election of an individual, and is therefore an exempt function within the meaning of section 527(e) (2). Litigation on a matter affecting the public's perception of the candidate's fitness for public office with respect to the candidate's or office-holder's conduct of official governmental functions, as long as it relates to the conduct of official duties, is, by reason of section 162(a) and Rev. Rul. 74-394, likewise an exempt function within the meaning of section 527(e) (2).

#### F. Indirect expenditures

You anticipate conducting activities that support the direct political program described above, including staff time, travel costs, legal and accounting costs, research, polling and focus groups, grassroots organizing, training, acquisition

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and enhancement of voter lists, Internet communications, mass media advertising, and distribution of identified issue messages to accompany and enhance the impact of the materials discussed above.

Section 1.527-2(c)(2) of the regulations, relating to indirect expenditures for an exempt function, provides in relevant part that "expenditures that are not directly related to influencing or attempting to influence the selection process may also be an expenditure for an exempt function by a political organization. These are expenses which are necessary to support the directly related activities of the political organization. Activities which support the directly related activities are those which must be engaged in to allow the political organization to carry out the activity of influencing or attempting to influence the selection process."

The expenditures you describe are necessary to carry out the activities described above that are directed at influencing voters' views on the connections between issues and candidates. These include, but may not be limited to, research activities, management and administrative personnel and associated expenses, rent, phone and other overhead items, legal services, and accounting services. Such indirect expenditures qualify as exempt function expenditures under section 1.527-2(c)(2) of the regulations.

These rulings are based on the understanding that there will be no material changes in the facts upon which they are based. Any changes that may bear upon your tax status should be reported to the Service.

We are sending a copy of this ruling to your key District Director for exempt organization matters. Because this letter could help resolve any questions about your exempt status, you should keep it with your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

This ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Thank you for your cooperation.

Sincerely,

Gerald V. Sack  
Chief, Exempt Organizations Technical Branch 4

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.

PLR 199925051, 1999 WL 424878 (IRS PLR)  
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