

MAY 21, 2012

The IRS Should Consolidate Its Two Rulings on Political Issue Ads

The political campaign activity of some 501(c)(4) social welfare organizations is in the news a lot lately, because the donors whose money is used for campaign attack ads are usually not disclosed. Non-charitable 501(c) organizations, which also include (c)(5) unions and (c)(6) business associations, could lose tax exemption if they allow political intervention to become their primary activity. It doesn't help that the IRS has two Revenue Rulings distinguishing nonpartisan issue advocacy and partisan political activity. They were issued only three years apart but may be read to diverge from each other — and neither explicitly applies to the primary purpose test.

So why not just consolidate them and clarify that the same multiple factors apply to all questions of political intervention that arise under the Internal Revenue Code? That's what I suggested in this letter to Lois Lerner, exempt organizations director at the Internal Revenue Service.

In particular, I think it is important to pick up the factor of "targeting" that was listed in the 2004 Ruling and somehow dropped out of the 2007 Ruling, to emphasize its relevance and importance. Many broadcast ads that may appear in content to be issue advocacy look quite different when you know they have been targeted at incumbents in battleground or "swing" states or districts.

This is something that the IRS and Treasury could, without constructing any new policy, fix now. In the middle of the 2012 elections, I think it would be a welcome clarification.

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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