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IRS Regulations of Political Activities of Tax-Exempt Organizations

As you may be aware, the IRS has proposed significant reforms that could limit the ability of tax-exempt 501(c)(4) organizations to participate in political campaigns. The IRS has also requested comments about whether it should broaden the scope of those regulations to encompass many other tax-exempt organizations, including 501(c)(3) charities, 501(c)(6) trade associations, and 501(c)(5) unions and agricultural associations. We outlined the most significant highlights of the IRS's proposed changes in our client alert last month.¹

But those changes are still under review and are unlikely to take effect before the end of the 2014 election cycle. This alert outlines the current state of affairs to assist tax-exempt organizations that wish to be involved in the public debate concerning important issues this year. This alert and our next alert (simple rules you can use to comply with the current regulations) may also aid organizations considering whether to comment on the IRS's proposed changes.

Tax exempt non-profit organizations must be careful about the types of public and political activities they involve themselves in. Qualifying non-profit organizations are exempt from federal income taxes and other federal taxes, but that favorable tax status comes at a price. Part of the price is that most tax exempt organizations are heavily regulated when they engage in certain types of political activities – specifically, (a) lobbying and (b) political campaigning. There are many categories of tax-exempt organizations, but because charities exempt under section 501(c)(3) receive even more favorable tax treatment under federal tax law, they are even more strictly limited and must avoid certain types of activities entirely.

But a non-profit organization does not give up its right to take strong positions on public issues or to take action to influence public policy merely because it is exempt from certain taxes. The federal tax limits on the political activities of tax-exempt organizations are, in fact, much narrower than most non-lawyers think. Tax-exempt organizations have the right to engage in the public square and make their positions on important issues known, even if those positions are controversial.

As a general rule, tax exempt organizations are allowed to express opinions – even strong opinions – on the issues of the day. Even 501(c)(3) charities, which are among the most heavily regulated, may engage in political activities that further their tax-exempt, charitable purposes. Whether in war or peace, in good times or in bad, tax-exempt organizations have played a significant role in shaping American culture and values and will continue to do so in the foreseeable future.

The main restrictions on the political activities of tax-exempt organizations involve lobbying (trying to convince Congress or a state or foreign legislature to enact or reject specific legislation) and intervening in political campaigns (supporting or opposing candidates for election to office).² But even when these restrictions apply, they leave a great deal of room for nonprofit organizations to participate in the public square. Many charities and other tax-exempt organizations engage in non-partisan activities such as sponsoring candidate debates, sponsoring public officials to speak to their conventions or other gatherings, issuing position papers or legislative policy agendas, or educating the public about current events and issues.

Tax-exempt organizations, especially charities, must still observe restrictions that do not apply to other organizations or individuals. As noted above, some of this may change if the IRS adopts regulations that it recently proposed for 501(c)(4) organizations, and particularly if the IRS decides to apply the same or similar rules to other types of tax-exempt organizations, such as 501(c)(3) charities or 501(c)(6) trade associations.

But until those changes are made (which is unlikely before 2015), the basic rules are these: To avoid intervening in a political campaign (which is often impermissible), the organization must avoid taking any action that could be construed as favoring one candidate or another. Lobbying restrictions are similar: so long as the organization does not support or oppose specific legislation or ballot measures, the IRS restrictions on lobbying usually do not apply. The rules may apply differently to different types of tax-exempt organizations, so the first step is to understand what category of tax exemption is involved. The most common categories are under Sections 501(c)(3), (c)(4), (c)(5), and (c)(6), but there are many others.

As we begin 2014, with a multitude of state and national elections, now is a good time for tax-exempt organizations to review their policies and practices. Organizations that know and understand the rules of the road can actively participate in the political process without undermining their tax exempt status. In our next client alert, we will lay out some simple rules that tax-exempt organizations (including charities, which are the most strictly regulated) can follow if they want to be politically active.

If you have questions regarding the rules on lobbying and political activity for your tax-exempt organization, please contact your regular Butzel Long attorney, a member of the Butzel Long Nonprofit Organizations Practice Group, or the authors of this client alert.

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¹ See <http://www.butzel.com/files/Publication/7247f46f-97fd-478a-abfb-7dee705b7119/Presentation/PublicationAttachment/e8692436-809d-419d-88e9-828cf639d270/131209enBUTZEL.pdf> for the unabridged version of the alert.

² Nonprofit organizations that lobby are sometimes required to register as lobbyists, but these restrictions rarely apply to most non-profit organizations. Certain other rules may limit some organizations that receive governmental grants or funding. If your organization hires a lobbyist, pays an employee to influence the government, makes significant expenditures to influence government decisions, or receives grants or other assistance from the government, you should consult a knowledgeable attorney to determine whether these restrictions apply to your organization.

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