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Simple Rules to Guide Tax-Exempt Organizations to Participate in Public Debate and Political Activities

In our [December 9, 2013 client alert](#), we described significant changes that the IRS is proposing in the way that it regulates the political activities of tax-exempt organizations. As we noted in that alert, those rules are unlikely to take effect in this year's election cycle. So what should you do if your organization wants to be involved in debate about public issues this year? What can and can't your organization do to influence political leaders and voters? As we noted in our [last client alert \(January 27, 2014\)](#), the current IRS regulations impose some important restrictions on tax-exempt nonprofit organizations limiting their ability to lobby or participate in political campaigns. These restrictions are detailed and very fact-specific, and they apply differently to different types of tax-exempt organizations.

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

- 1. Do not specifically identify any legislation in any message.** This is a simple way to avoid running afoul of lobbying restrictions on most non-profits. Caveat: There are several different ways to identify specific legislation, so be careful about how your organization discusses any legislative proposal. For example, the phrase "*the President's plan for a drug-free America*" might be enough to identify specific legislation if that or similar phrases have been closely linked in the past to specific legislative proposals. But that won't (and shouldn't) stop your non-profit organization from advocating more general public policy goals, such as achieving a drug-free America.
- 2. Do not name any politicians or candidates for public office (including current office-holders) in any message.** Under the campaigning regulations, 501(c)(3) charities are prohibited from supporting or opposing candidates for election to public offices, and many other types of tax-exempt organizations are restricted from these activities. Although a tax-exempt organization cannot completely insulate itself from the campaign regulations by following this rule, keeping all politicians' names out of any message goes a long way to providing charities with the necessary protection.
- 3. Do not concentrate your particular activities close to any election.** Both the IRS and the Federal Election Commission (which regulates how all organizations, including non-profit organizations, participate in federal elections) consider how much time is left before an election when the organization delivers its message. Although they use somewhat different tests and weigh this factor differently, the bottom line is this: your organization's message should be part of an ongoing campaign tied to promoting its tax-exempt purposes, not a targeted communication delivered just before an election. As a rule, "*just before an election*" in this context means any message delivered 2-3 months before a primary or final election.

4. **If your organization does deliver a message closer to an election, deliver the same message over a wide-geographical area and not just in areas where the subject of the message might be considered an issue in an upcoming election.** For instance, if there is an upcoming election for a county or local office and your message could be construed as being about an issue in that election, don't deliver the message only in those areas. Deliver the message in other areas throughout the state where there are no upcoming elections. (Under these hypothetical circumstances, it might also be important to show that the message was part of an ongoing campaign tied to promoting the organization's purposes rather than a short-term spurt of activity near an election.)
5. **Do not give anything for free or at discounted rate to a candidate for public office that your tax-exempt organization could sell at a market rate to someone else.** The candidate's campaign should pay the fair market value for any service or other item that your organization provides to the candidate. This includes mailing lists, telephone banks, meals, staff time, transportation, and other items.
6. **Whatever your tax-exempt organization offers or provides to any candidate should be made available on equal terms to all other candidates for the same public office.** Otherwise, the IRS might interpret your activities as partisan rather than charitable and penalize your organization accordingly. For instance, allowing a candidate to rent your facility for any event could be permissible, but only if you likewise make it available to other candidates or for other events as well. If you have any question about what constitutes "equal terms" in your particular situation, seek legal advice.
7. **Do not invite a politician seeking election to address your tax-exempt organization in person or in writing without first obtaining legal advice.** Don't ask an incumbent office holder who is seeking reelection to address your group in his or her official capacity until you have had an opportunity to discuss your plans with counsel. There is nothing wrong with having anyone, including a politician seeking election, come and address your group, and many charities and other exempt organizations do exactly that every year. But the rules are complicated and can easily tangle up a layperson with even the best intentions. A small investment in an experienced lawyer's time could save your organization much grief and legal expenses later.
8. **Do not mention voting in an upcoming election without first obtaining legal advice.** There are many ways that a tax-exempt organization can legally encourage citizens to vote and many charities and other exempt organizations engage in these activities in every election cycle. Under certain circumstances, charities and other exempt organizations are allowed to operate voter registration drives, distribute voter guides, and engage in other activities to encourage people to vote. But the complications in the rules governing these activities make it wise for the organization to consult with an experienced lawyer before launching such a program.
9. **Be careful what you put on your website and, just as importantly, what your website links to.** The IRS expects you to know the content of any websites that your website links to, and especially the contents of the web pages your site links to directly. You are not prohibited from linking to sites with content concerning legislation or political candidates, but the rules get more complicated if you do. The simplest approach is to avoid linking to any sites that could include political content. In most cases, your link is safe as long as the page it links to directly is free of lobbying or political campaign references. Otherwise, seek legal advice. By the way, similar precautions should be used for information presented or referenced in the organization's newsletters or other printed material.
10. **Education about your purpose and mission can be important.** Wherever possible, the non-profit organization should consider one additional measure: phrasing messages in terms that are as educational and non-confrontational as possible. This added measure also helps the organization keep its communications consistent and in line with its underlying purpose and mission, as well as helping the organization to avoid raising any questions about its conduct.

As we approach the 2014 elections, with a multitude of state and national races, 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.

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 alert.

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