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04/26/2006 07:50 AM

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"Morton Cynthia D"

cc <Cynthia.D.Morton@irsounsel.treas.gov>, "Blumenfeld
Michael B"

bcc

Subject Rulemaking petition: Notice of Availability

Dear Mr. Deutsch:

Thank you for providing us a copy of the FEC's Notice of Availability regarding an exception for certain "grassroots lobbying" communications from the definition of "electioneering communications." I am attaching our comments below. We are also sending the signed original letter via regular mail.

If you have any questions or concerns regarding our comments or other related matters, please feel free to contact Michael Blumenfeld at (202) 622-7103 or me at (202) 622-6070.

Sincerely,

Cynthia Morton
Attorney
Exempt Organizations Branch 1
Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities)
CC:TEGE:EOEG:EO1
Internal Revenue Service



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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

April 25, 2006

VIA E-MAIL & REGULAR MAIL

Mr. Brad Deutsch
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Deutsch:

Thank you for sending to us a copy of the Rulemaking Petition: Notice of Availability asking the Commission to revise its regulations by exempting certain communications consisting of "grassroots lobbying" that otherwise meet the definition of an "electioneering communication" under the Federal Election Campaign Act of 1971, as amended. Because the Federal Election Commission and the Internal Revenue Service are to work together to promulgate rules, regulations and forms which are mutually consistent, we mention for your consideration Rev. Rul. 2004-6, 2004-1 C.B. 328.

Rev. Rul. 2004-6 sets forth factors that the Internal Revenue Service considers to determine whether communications by certain tax-exempt organizations (specifically, those organizations described in section 501(c)(4), (5) & (6)) are public advocacy communications consistent with their exempt purposes or exempt function communications that subject the organization to tax under section 527(f) of the Internal Revenue Code. The term "exempt function" for purposes of section 527 is defined in section 527(e)(2) as including "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."

While Rev. Rul. 2004-6 uses the term "public advocacy communication," the ruling also states that this type of advocacy may include lobbying for legislation. Finally, the ruling states that because advocacy communications may discuss the positions of officeholders who are also candidates, the communication may be one that is for an "exempt function" (i.e., a communication that influences or attempts to influence an election) and subjects the organization to tax under section 527(f). In certain situations discussed in the revenue ruling, however, discussions of the positions of incumbent candidates for public office are found not to be for an exempt function.

Rev. Rul. 2004-6 states that factors that tend to show that an advocacy communication on a public policy issue is for an exempt function under section 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 a distinguishing the candidate from others in the campaign, either in the communication itself or in other public communication; and
- f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

Factors that tend to show that an advocacy communication on a public policy issue is not for an exempt function under section 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.

If you would like to discuss how the proposals set forth in the Notice of Availability interact with the Federal tax laws, please feel free to call Cynthia Morton at (202) 622-6070 or me at (202) 622-7103.

Sincerely,

Michael B. Blumenfeld
Senior Technician Reviewer
Exempt Organizations Branch 2
Office of the Division Counsel/Associate Chief
Counsel (Tax Exempt & Government Entities)