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

Subject: Internal Revenue Service Comments on Notice 2004-6

Dear Ms. Dinh:

Thank you for providing us a copy of the FEC's proposed rules related to political committee status. 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 B. Blumenfeld or me at (202) 622-6070.

Sincerely,

Cynthia Morton
Attorney
Exempt Organizations Branch 1
Office of the Division Counsel/ Associate Chief Counsel (Tax-Exempt & Government Entities)
CC:TEGE:EOEG:EO1
Internal Revenue Service
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OFFICE OF
CHIEF COUNSEL

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

April 5, 2004

VIA E-MAIL & REGULAR MAIL

Ms. Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Ms. Dinh:

Thank you for sending to us a copy of the Notice of Proposed Rulemaking (NPRM) relating to political committee status. The NPRM considers whether the Federal Election Commission (FEC) should amend its regulations defining whether an entity is a nonconnected political committee and what constitutes an expenditure. We believe the proposed rules set out in the NPRM may impact several types of organizations that are exempt from Federal income tax as well as organizations that meet the definition of "political organization" under section 527 of the Internal Revenue Code. While we are still considering the NPRM, because the FEC and the IRS are to work together to promulgate rules, regulations, and forms which are mutually consistent, we are providing a brief explanation of the relevant Federal tax laws, regulations and rulings applicable to the political campaign activities of certain tax-exempt and political organizations.

Several provisions of the Internal Revenue Code contain rules that govern the political activities of certain tax-exempt organizations and political organizations. Organizations that are exempt from Federal income tax because they qualify as an organization described in section 501(c)(3) (generally "charities") cannot intervene in a political campaign on behalf of (or in opposition to) any candidate for public office. The Internal Revenue Service has published several revenue rulings which illustrate that a section 501(c)(3) organization may engage in several activities related to an election if the activity does not indicate a bias for or against particular candidates. Rev. Rul. 78-248, 1978-1 C.B. 154 (discussing publication of voter guides), Rev. Rul. 78-248, 1978-1 C.B. 154 (discussing publication of candidate questionnaires), Rev. Rul. 86-95, 1986-2 C.B. 73, (discussing candidate forums), and Rev. Rul. 74-574, 1974-2 C.B. 160 (discussing providing free air time to candidates).

Tax-exempt organizations described in section 501(c)(4) ("social welfare organizations") may participate or intervene in political campaigns so long as they primarily engage in activities that promote the social welfare. Activities that promote the social welfare do not include participating or intervening in a political campaign. 26 C.F.R. § 1.501(c)(4)-1(a)(ii).

The IRS recently published Rev. Rul. 2004-6, 2004-04 I.R.B. (<http://www.irs.gov/pub/irs-drop/rr-04-6.pdf>) concerning public advocacy activities conducted by certain types of tax-exempt organizations, including section 501(c)(4) social welfare organizations, section 501(c)(5) unions and section 501(c)(6) trade associations. The ruling provides that these organizations are generally permitted to engage in advocacy or lobbying related to their exempt purposes. The ruling provides examples and sets forth factors to be taken into account in determining whether certain expenditures are taxable because they are for activities that influence or attempt influence elections.

The principal regulations that apply for determining whether or not an organization is a political organization under section 527 of the Internal Revenue Code are discussed below. The regulations define a political organization as “a party, committee, association, fund, or other organization . . . organized and operated primarily for the purpose of . . . accepting contributions or making expenditures for exempt function activity. . . .” 26 C.F.R. § 1.527-2(a)(1). In general, 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.” 26 C.F.R. § 1.527-2(c)(1).

Finally, we note that the NPRM cites several IRS private letter rulings that discuss political campaign issues. We must point out that private letter rulings are taxpayer-specific rulings furnished by the IRS in response to requests made by taxpayers. It is important to note that, pursuant to 26 U.S.C. § 6110(k)(3), private letter rulings cannot be used or cited as precedent.

If you would like to discuss any impact the proposals set forth in the NPRM may have on tax-exempt organizations, please feel free to call Cynthia Morton or me at (202) 622-6070.

Sincerely,

Michael B. Blumenfeld
Senior Technician Reviewer
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Office of the Division Counsel/Associate Chief
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