IRS Issues Proposed Regulations for Tax-Exempt Social Welfare Organizations

On November 26, the Internal Revenue Service (IRS) issued proposed regulations regarding political activities of social welfare organizations.

Civic leagues and social welfare organizations are eligible for tax-exemption under Section 501(c)(4). The current regulations provide that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and general welfare of the people of the community. In addition, the current regulations state that the promotion of social welfare “does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.” Currently, the IRS weighs the facts and circumstances in order to determine whether political campaign intervention occurs. The proposed regulations attempt to replace the “facts and circumstances” test with brighter-line rules.

First, the proposed regulations would replace the current standard for intervention in political campaigns to state that “the promotion of social welfare does not include direct or indirect candidate-related political activity.” In addition, the proposed regulations provide the following guidance:

- A Candidate includes any person who identifies himself or is proposed by another for selection, nomination, election, or appointment to any public office or office in a political organization. Importantly, a Candidate includes executive branch officials and judicial nominees, a much broader category than the current rule requiring only candidates for elective public office.

- Candidate-related political activity includes communications that expressly advocate for or against a candidate. A candidate can be identified in a communication by name, photograph, or reference.

- Public communication made within 60 days before a general election or 30 days before a primary election that clearly identifies a candidate for public office would be considered candidate-related political activity. Additionally, content previously posted by an organization on its Web site that clearly identifies a candidate and remains on the Web site during the specified pre-election period would be treated as candidate-related political activity.
IRS Issues Proposed Regulations for Tax-Exempt Social Welfare Organizations (continued)

- Candidate-related political activity includes contributions to, or the solicitation of, contributions on behalf of (1) any person if such contribution is recognized as a reportable contribution under campaign finance law; (2) any political party, political committee, or other Section 527 organizations; or (3) any organization described in Section 501(c) that engages in candidate-related political activity. With respect to 501(c) organizations, the proposed regulations allow a donor to obtain specified written representation from the recipient organization that the grant will not be used for candidate-related political activity.

- Candidate-related political activity would include certain specified election-related activities. In general, these may include voter registration, get-out-the-vote drives, and voter guides. In addition, certain events near an election where a candidate attends would be deemed “engaging in” candidate-related political activity.

- Activities conducted by an organization include (1) activities paid for by the organization or conducted by the organization’s officers, directors, or employees acting in that capacity, or by volunteers acting under the organization’s direction or supervision; (2) communications made as part of the program at a function of the organization or in a publication of the organization; and (3) other communications (including the organization’s Web site) that is paid for by the organization.

The IRS seeks comments from the public regarding the proposed regulations. Importantly, the guidance does not address the current standard of what it means to be operated exclusively for the promotion of social welfare by primarily engaging in exempt purpose activities, and the IRS requests comments on how this standard should be measured and whether it should be changed.

For more information about this article, please contact us at nonprofit@windes.com or any of our tax professionals at (562) 435-1191, (949) 271-2600, or (213) 239-9745.
Clergy Housing Tax Break Declared Unconstitutional

On November 22, 2013, the U.S. District Court for the Western District of Wisconsin ruled that the Internal Revenue Service (IRS) exemption that allows clergy to shield a portion of their salary from federal income taxes is unconstitutional. The case is centered on Section 107(2), which excludes from gross income rental allowances paid to ministers of the gospel.

A minister may also claim a deduction for mortgage interest and real property taxes as part of itemized deductions if he owns his own home. This is known as "double dipping" because the ministers are able to deduct part of the tax-free income they received. It is important to note that this ruling does not address the provision of housing under Section 107(1), but only the housing allowance exclusion.

Judge Barbara Crabb ruled that the exemption violates the establishment clause because it "provides a benefit to religious persons and no one else, even though doing so is not necessary to alleviate a special burden on religious exercise." It is expected that this ruling will be appealed to the Chicago-based Seventh U.S. Circuit Court of Appeals.

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IRS Warns of Possible Scams Relating to Relief of Typhoon Victims

On November 15, the Internal Revenue Service (IRS) issued an alert regarding potential scams involving persons impersonating charities to obtain donations and private information. In particular, the IRS advised:

- To help disaster victims, donate to recognized charities.
- Be wary of charities with names that are similar to familiar or nationally known organizations. Some phony charities use names or websites that sound or look like those of respected, legitimate organizations.
- Don’t give out personal financial information — such as Social Security numbers or credit card and bank account numbers and passwords — to anyone who solicits a contribution from you.
- Don’t give or send cash. For security and tax record purposes, contribute by check or credit card or another way that provides documentation of the gift.

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Windes team approach allows you to benefit from a wealth of technical expertise and extensive resources. We service a broad range of clients, from high-net-worth individuals and nonprofit organizations to privately held businesses and publicly traded companies. We act as business advisors, working with you to set strategies, maximize efficiencies, minimize taxes, and take your business to the next level.