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IRS Announces It Will Re-Propose Regulations Defining Political Activity for §501(c)(4) Exempt Organizations (EOs)

In November, 2013, Treasury published proposed regulations that would have substantially expanded the definition of political activity solely for purposes of determining whether a §501(c)(4) “social welfare” organization was primarily engaged in social welfare activity (including lobbying, but excluding political activity).

In response, the IRS received substantial comments questioning the constitutionality of the proposed regulations; the IRS’ authority to issue them; and that under the proposed regulations, nonpartisan voter education, registration, and get-out-the vote activities that may be undertaken by a §501(c)(3) organization would have been treated as intervention in a political campaign if undertaken by a §501(c)(4) organization. Although most political activity is undertaken by EOs that are exempt under §501(c)(4), (5) (labor unions), or (6) (trade associations), commenters also urged the IRS to adopt a definition of “intervention in a political campaign” that would apply uniformly to all EOs.

As a result, on May 22, 2014, the IRS issued the following announcement:

Last November, Treasury and the IRS proposed a new regulation governing political activity of section 501(c)(4) organizations. The proposal generated over 150,000 written comments — the most comments ever received by Treasury and IRS on a proposed tax regulation. Consistent with our standard rulemaking process, we intend to review those comments carefully, take into account public feedback, and consider any necessary changes. Consistent with what Commissioner Koskinen has previously stated, it is likely that we will make some changes to the proposed regulation in light of the comments we have received. Given the diversity of views expressed and the volume of substantive input, we have concluded that it would be more efficient and useful to hold a public hearing after we publish the revised proposed regulation. Treasury and the IRS remain committed to providing updated standards for tax-exemption that are fair, clear, and easier to administer.

Reading between the lines, Treasury is likely to make significant changes to the proposed regulations, and publish a new set of proposed regulations. This will provide the EO community with an opportunity to comment on the new set of proposed regulations, as well as to testify at a public hearing.

Based on statements by Commissioner Koskinen, Treasury is likely to publish the new proposed regulations early in 2015.

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