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Treasury, IRS Will Issue Proposed Guidance for Tax-Exempt Social Welfare Organizations: Initial Proposed Guidance Clarifies Qualification Requirements and Seeks Public Input.

WASHINGTON — The U.S. Department of the Treasury and the Internal Revenue Service today will issue initial guidance regarding qualification requirements for tax-exemption as a social welfare organization under section 501(c)(4) of the Internal Revenue Code. This proposed guidance defines the term "candidate-related political activity," and would amend current regulations by indicating that the promotion of social welfare does not include this type of activity. The proposed guidance also seeks initial comments on other aspects of the qualification requirements, including what proportion of a 501(c)(4) organization's activities must promote social welfare.

The proposed guidance is expected to be posted on the Federal Register later today.

There are a number of steps in the regulatory process that must be taken before any final guidance can be issued. Given the significant public interest in these and related issues, Treasury and the IRS expect to receive a large number of comments. Treasury and the IRS are committed to carefully and comprehensively considering all of the comments received before issuing additional proposed guidance or final rules.

"This is part of ongoing efforts within the IRS that are improving our work in the tax-exempt area," said IRS Acting Commissioner Danny Werfel. "Once final, this proposed guidance will continue moving us forward and provide clarity for this important segment of exempt organizations."

"This proposed guidance is a first critical step toward creating clear-cut definitions of political activity by tax-exempt social welfare organizations," said Treasury Assistant Secretary for Tax Policy Mark J. Mazur. "We are committed to getting this right before issuing final guidance that may affect a broad group of organizations. It will take time to work through the regulatory process and carefully consider all public feedback as we strive to ensure that the standards for tax-exemption are clear and can be applied consistently."

Organizations may apply for tax-exempt status under section 501(c)(4) of the tax code if they operate to promote social welfare. The IRS currently applies a "facts and circumstances" test to determine whether an organization is engaged in political campaign activities that do not promote social welfare. Today's proposed guidance would reduce the need to conduct fact-intensive inquiries by replacing this test with more definitive rules.

In defining the new term, "candidate-related political activity," Treasury and the IRS drew upon existing definitions of political activity under federal and state campaign finance laws, other IRS provisions, as well as suggestions made in unsolicited public comments.

Under the proposed guidelines, candidate-related political activity includes:

1. Communications

Communications that expressly advocate for a clearly identified political candidate or candidates of a political party.

Communications that are made within 60 days of a general election (or within 30 days of a primary election) and clearly identify a candidate or political party.

Communications expenditures that must be reported to the Federal Election Commission.

2. Grants and Contributions

Any contribution that is recognized under campaign finance law as a reportable contribution.

Grants to section 527 political organizations and other tax-exempt organizations that conduct candidate-related political activities (note that a grantor can rely on a written certification from a grantee stating that it does not engage in, and will not use grant funds for, candidate-related political activity).

3. Activities Closely Related to Elections or Candidates

Voter registration drives and “get-out-the-vote” drives.

Distribution of any material prepared by or on behalf of a candidate or by a section 527 political organization.

Preparation or distribution of voter guides that refer to candidates (or, in a general election, to political parties).

Holding an event within 60 days of a general election (or within 30 days of a primary election) at which a candidate appears as part of the program.

These proposed rules reduce the need to conduct fact-intensive inquiries, including inquiries into whether activities or communications are neutral and unbiased.

Treasury and the IRS are planning to issue additional guidance that will address other issues relating to the standards for tax exemption under section 501(c)(4). In particular, there has been considerable public focus regarding the proportion of a section 501(c)(4) organization’s activities that must promote social welfare. Due to the importance of this aspect of the regulation, the proposed guidance requests initial comments on this issue.

The proposed guidance also seeks comments regarding whether standards similar to those proposed today should be adopted to define the political activities that do not further the tax-exempt purposes of other tax-exempt organizations and to promote consistent definitions across the tax-exempt sector.

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