



COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

June 10, 2004

America First National Committee
1630 A 30th Street
PMB 111
Boulder, CO 80301
Attn: John Pittman Hey, Treasurer

Libertarian National Committee Inc.
2600 Virginia Avenue NW #100
Washington, DC 20037
Attn: William Redpatch, Treasurer

Constitution Party National Committee
23 North Lime Street
Lancaster, PA 17602
Attn: Joe Sanger, Treasurer

Natural Law Party of the United States
PO Box 1900
Fairfield, IA 52556
Attn: Leslie Brooks, Treasurer

Democratic National Committee
430 South Capitol Street SE
Washington, DC 20003
Attn: Andrew Tobias, Treasurer

Republican National Committee
310 First Street SE
Washington, DC 20003
Attn: Michael L. Retzer, Treasurer

Green Party of the United States
PO Box 18452
Washington, DC 20036
Attn: Gerald Schneider, Treasurer

Dear Sir or Madam:

As each presidential election draws near, press reports often raise questions about the role charitable organizations, such as churches, may play in the political debate. This year is no exception. That is why we have issued a news release on the subject in every presidential election year since 1992 (e.g. IR-2004-59, issued April 28, 2004, copy enclosed). I am providing you with the following information about the federal income tax law requirements to help you ensure that during this election season your committee and the candidates you support do not, inadvertently or otherwise, jeopardize the tax-exempt status of any charitable organization. While there is pending legislation that may modify the rules in this area, the Internal Revenue Service is charged by Congress with policing current law and will take whatever actions are necessary to stem abusive behavior.

Organizations described in section 501(c)(3) of the Internal Revenue Code that are exempt from federal income tax are prohibited from directly or indirectly participating or intervening in any political campaign on behalf of, or in opposition to, any candidate for

public office. Charities, educational institutions and religious organizations, including churches, are among those that are tax-exempt under this code section.

Whether a tax-exempt charitable organization is engaging in prohibited political campaign activity depends upon all the facts and circumstances in each case. For example, organizations may encourage people to participate in the electoral process by sponsoring debates or forums to educate voters, distributing voter guides, or conducting voter registration or get-out-the-vote drives. If the debate or forum, voter guide, or voter registration or get-out-the-vote drive shows a preference for or against a certain candidate or party, however, it becomes a prohibited activity.

Thus, under Federal law tax-exempt charitable organizations are prohibited from endorsing any candidates, making donations to their campaigns, engaging in fund-raising, distributing statements, or becoming involved in any other activities that may be beneficial or detrimental to any candidate. Even activities that encourage people to vote for or against a particular candidate on the basis of nonpartisan criteria violate the political campaign prohibition of section 501(c)(3).

The federal courts have upheld this prohibition on political campaign activity, most recently in Branch Ministries v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000). The courts have held that it is not unconstitutional for the tax law to impose conditions, such as the political campaign prohibition, upon exemption from federal income tax.

The prohibition on political campaign activity applies only to tax-exempt charitable organizations, not to the activities of individuals in their private capacity. The political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of charitable organizations, including churches, speaking for themselves, as *individuals*. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax-exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official organization functions, including official church publications and functions.

Similarly, the prohibition on political campaign activity does not prohibit charitable organizations from having contact of any kind with individuals who are candidates for public office. Depending on the facts and circumstances, a charitable organization, such as a church, may invite political candidates to speak at its events without jeopardizing its tax-exempt status. A charitable organization may invite political candidates to speak in their capacity as candidates if the organization takes steps to ensure that:

- It provides an equal opportunity to other political candidates seeking the same office,
- It does not indicate any support of or opposition to any candidate, and

- No political fund-raising occurs.

A charitable organization may invite a political candidate to speak in his or her individual (non-candidate) capacity if the organization takes steps to ensure that:

- The candidate speaks only in a non-candidate capacity,
- Neither the candidate nor any representative of the organization makes any mention of the election or candidacy of the individual, and
- No campaign activity occurs in connection with the candidate's attendance.

If the IRS finds a section 501(c)(3) organization engaged in prohibited campaign activity, the organization could lose its tax-exempt status and it could be subject to an excise tax on the amount of money spent on that activity.

In cases of flagrant violation of the law, the IRS has specific statutory authority to make an immediate determination and assessment of tax. Also, the IRS can ask a federal district court to enjoin the organization from making further political expenditures. In addition, contributions to organizations that lose their section 501(c)(3) status because of political activities are not deductible by the donors for federal income tax purposes.

For additional information about the political campaign prohibition for tax-exempt charitable organizations, please see our web site at www.irs.gov/eo. In addition, the political campaign prohibition as it applies to churches is discussed on pages 7 through 11 of the enclosed Publication 1828, *Tax Guide for Churches and Religious Organizations*.

I hope the enclosed information is helpful. If you have any questions, please contact Judith Kindell (ID #50-03955) at (202) 283-8964.

Sincerely,

\s\

Steven T. Miller

Enclosures (2)