

Profitable **Solutions** *for* **Nonprofits**

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It's all political — or is it?

**What nonprofits can
and can't do in campaigns**

Nonprofits without borders

Generating revenue from foreign sources

How to embrace accountability

Newsbits



It's all political — or is it?

What nonprofits can and can't do in campaigns

With election season heating up, not-for-profits must take care not to stray into prohibited political activity that could jeopardize their tax-exempt status. The IRS has addressed the acceptability of several common activities. Knowing the agency's position on these activities could save you tax trouble down the road.

BAN ON POLITICAL CAMPAIGN INTERVENTION

The Internal Revenue Code is clear: For a nonprofit to maintain its status, it can't "participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office."

But that doesn't mean your hands are completely tied. If certain conditions are met, not-for-profits can indeed be active — though nonpartisan — players in the political arena.

VOTER CONTACT

Nonprofits can conduct voter registration and get-out-the-vote drives if they're conducted in a neutral, nonpartisan manner. But you can't, for example, refer to any candidate or party, either in support or opposition.

Voter education activities, such as the preparation and distribution of voter guides, are similarly allowed if conducted in a nonpartisan way. The IRS will consider whether the questionnaire used to solicit candidate positions or the guide itself demonstrates a bias or preference in content or structure



with respect to the views of a particular candidate. The timing and distribution of voter education materials also could be relevant.

CANDIDATE APPEARANCES

A not-for-profit can invite a candidate to speak at an event in his or her capacity as a candidate if 1) it provides to all of the candidate's rivals an equal opportunity to participate, 2) it doesn't indicate support for or opposition to any candidate (including in introductions and communications about a candidate's attendance), and 3) no political fundraising takes place.

When evaluating whether equal opportunity to participate has been provided, the IRS will consider both the manner of presentation and the nature of the event to which each candidate is invited. You'll probably violate the prohibition if, for example, you invite

one candidate to speak at a heavily attended annual banquet but invite her opponent only to a poorly attended general meeting.

If you invite a candidate to appear in his or her individual, noncandidate capacity, you must ensure that:

- * The candidate is chosen to speak solely for reasons other than candidacy (for example, because he's an expert on a certain topic),
- * The candidate speaks only in a noncandidate capacity,
- * Neither the candidate nor any representative of your organization refers to the candidacy or election,
- * No campaign activity occurs,
- * Your organization maintains a nonpartisan atmosphere, and
- * Your nonprofit clearly indicates the capacity in which the candidate is appearing, without reference to the candidacy or election, in the communications announcing the appearance.

Violation of the ban on political activity could result in the denial or revocation of your nonprofit's tax-exempt status.

Candidates also may attend a not-for-profit's event that's open to the public as long as the organization doesn't publicly recognize the candidate or invite him or her to speak.

BUSINESS ACTIVITIES

An activity such as selling or renting mailing lists, leasing office space or accepting paid political advertising may constitute prohibited activity. The determination will depend on several factors.

These may include whether the good, service or facility is available to rival candidates on an equal basis,

whether it's available to the general public, whether the fees charged are the nonprofit's usual rate, and whether the activity is an ongoing activity of the organization (as opposed to conducted for only a particular candidate).

PROCEED WITH CAUTION

Violation of the ban on political activity could result in the denial or revocation of your nonprofit's tax-exempt status, as well as the imposition of an excise tax on the amount spent on the prohibited activity. The determination of whether an activity is political will ultimately depend on the specific facts and circumstances. But remember, the underlying criterion for an activity *not* to be political is generally that the activity clearly be nonpartisan. *

OTHER "POLITICAL" INVOLVEMENT — KNOW THE LIMITS

Many people think of any involvement in government as "political," but tax law distinguishes between politics involving candidates and lobbying involving legislation. Certain involvement, including making certain contributions, is permissible.

A 501(c)(3) organization can make a contribution to a ballot measure committee, for instance, because it's a type of lobbying that supports or opposes initiatives or referenda. The nonprofit must, however, include such contributions in its lobbying calculations to determine if a substantial part of its activities consists of attempting to influence legislation.

Tax-exempt organizations other than 501(c)(3)s can have limited involvement with politics. A 501(c)(4) organization, for example, is allowed to favor candidates when that accomplishes the organization's exempt purpose.

A 501(c)(3), however, can't make a contribution to a 501(c)(4) for political activity — or to certain political organizations, including candidate committees, political party committees or political action committees. In addition, a 501(c)(3) can't establish a separate segregated fund under Section 527 of the Internal Revenue Code, "Political Organizations."

Nonprofits without borders

Generating revenue from foreign sources

As the U.S. economy continues its rocky course, many not-for-profits struggle to increase or even maintain their revenues. More and more organizations are thinking creatively and reaching beyond traditional geographic borders to pump up donations, membership, product sales and conference attendance — the activities that often drive revenue. While these initiatives can certainly pay off, you should consider several factors to determine whether they're right for you.

WHY LOOK ABROAD?

The balance of economic power around the globe is undergoing dramatic shifts. According to Merrill Lynch's *World Wealth Report 2011*, for example, the population of high net worth individuals in Asia is now second only to that in North America. Such emerging markets are increasing their levels of giving while other markets are leveling or dropping off.

Most U.S. nonprofits can't afford to keep a narrow domestic focus in the face of a global economy. In addition, by connecting with foreign donors, members and customers, an organization can diversify its portfolio of supporters. Doing so will likely leave it less

vulnerable to sudden or prolonged economic downturns in its base country.

CRITICAL CONSIDERATIONS

As not-for-profit leaders know, building relationships is a key to building a donation base. Relationships are especially important when dealing with foreign donors, who generally lack the tax deduction incentive U.S. donors enjoy. (The United States does, however, have a tax treaty with Canada that allows Canadians who donate to U.S. nonprofits to offset their contributions against their U.S. income for Canadian tax purposes.)

The need to build relationships has prompted some organizations to hold conferences or even open offices in target countries. Local offices in foreign countries can form boards of directors, advisory councils and other bodies that encourage participation and fundraising by individuals in those countries.

A local entity may be more attractive to foreign donors than one based in the United States. Getting his or her "hands dirty" working with an organization is often the turning point in solidifying a donor's relationship with that not-for-profit. Local contributions also lessen the need for grants from U.S. organizations.

Bear in mind, though, that such a level of activity abroad will likely require you to register as a U.S. company doing business in the foreign country. Even if you have only one employee, you may need to set up a taxable subsidiary in the country or retain an independent contractor. Requirements vary from country to country.

Activities abroad also can ramp up your Form 990 reporting obligations, specifically those related to Schedule F, "Statement of



Activities Outside the United States.” You must file Schedule F if you had aggregate revenues or expenses of more than \$10,000 during the tax year from grant making, fundraising, business (including investments), unrelated trade or business, program services, and maintaining offices, employees or agents.

If you solicit foreign donations or payments, you'll need a system that can process multiple types of currency.

Additionally, the organization must report (by region) the number of offices; the activities conducted; the number of employees, independent contractors and agents; the total expenditures and investments; and, for program service activities, the specific type of service.

PAYMENT ISSUES

If you solicit foreign donations or payments, you'll need a system that can process multiple types of

currency. In recent years, numerous nonprofits have turned to the online payment company PayPal to handle incoming payments, both domestic and foreign.

The allure is clear — PayPal offers qualifying charitable organizations a discount on their processing rates for donations. It also provides donors with an immediate receipt, quickly confirming the money was received.

But the company does impose added fees for international transactions. Further, while PayPal can accept money from other PayPal accounts throughout the world in various currencies, the local PayPal company will release money only to a bank in the same country. PayPal France, for example, will only release an organization's money from French individuals to a bank account in France.

BRAVE NEW WORLD?

Reaching across borders for revenue isn't as simple as it might appear. The costs could end up outweighing the benefits. Before making any decisions, it's critical to thoroughly investigate and evaluate your options, consulting your financial advisor and legal counsel where appropriate. *

How to embrace accountability

There is much talk about accountability, especially financial accountability for charitable and other exempt organizations.

Nonprofits need to embrace accountability to protect the organization and its people, to demonstrate openness and forthrightness in external dealings and to support the greater good. Embracing accountability also helps not-for-profits fulfill their fiduciary responsibilities to donors, constituents and the public. But how can nonprofits truly embrace this abstract term?

DRAW THE BIG PICTURE

There can be no accountability without good governance. You must set in place the means and measures to keep your organization in compliance with all applicable laws and rules as well as best practices. And most important, your not-for-profit must keep in line with its mission and guiding principles, including integrity.

Author and nonprofit expert J. Steven Ott describes an organization's governance as “a product of its purposes, people, resources, contracts, clients, boundaries,



community coalitions and networks, and actions as prescribed (or prohibited) in its articles of incorporation and bylaws, state laws and codes, and the IRS codes and rules.”

When it comes to accountability and governance, the buck unquestionably stops with your board. Therefore, it’s critical that you help the board understand its responsibilities and focus its attention on carrying out the not-for-profit’s mission — not the process-oriented details best handled at the staff or committee level.

Your nonprofit must comply with all legally required reporting procedures — and certain financial practices.

WATCH THE NUMBERS

Keeping the financials spotless is critical. So make sure you conduct regular, board-approved audits that are attested to by the executive director and principal financial manager. Management should present internal financial statements to the board — or its audit or finance committee — and review performance against

approved budgets on at least a quarterly basis. In addition, the board should establish and regularly assess financial performance measurements.

Your nonprofit must comply with all legally required reporting procedures — and certain financial practices that may apply to a specific activity. For example, one of your major funders or a national affiliate of your organization might require you to provide key performance indicators or other reports linking operational results with financial information.

RESPECT YOUR MISSION

As you carry out your initiatives, do so fairly and in the best interests of your constituents and community. Your status as a not-for-profit means you’re obligated to use your resources only toward your mission and to benefit the community that you serve. Programs should be evaluated accordingly, both in respect to the activities and the results or outcomes.

MAKE IT CLEAR

Communication is a big part of accountability. Your annual report, for example, should reflect your mission and summarize the year’s activities. It’s best practice for the report to also provide financial data for the year and other information, such as a list of board members, management staff and other key employees.

As a public document, your nonprofit’s Forms 990 for the previous three years will give your public a good overview of your organization’s exempt activities, finances, governance, compliance and compensation methods.

ACCOUNTABILITY PAYS OFF

Your organization’s demonstration of accountability is likely to generate a positive response from your constituents, whether it’s in the form of donations, funding, volunteering or simply spreading the word about the merits of your nonprofit. And that’s the kind of outcome worth pursuing. *

Newsbits

TAX TREATMENT OF CELL PHONES

New IRS guidance describes how employers can handle the cost of cell phones they provide to employees. The guidance, found in IRS Notice 2011-72 and the Sept. 14 memorandum to field examiners, "Interim Guidance on Reimbursement of Employee Personal Cell Phone Usage in light of Notice 2011-72," also describes how to handle reimbursement of cell phone costs if the employee provides the cell phone.

Providing a cell phone — or a cell phone allowance — to employees can be tax-free in many situations, including if your organization needs to be able to contact an employee at all times for work-related emergencies or if you require that an employee away from the office be available to speak with clients or constituents.

In other words, the cell phone must be needed for the nonprofit's benefit and can't be provided simply as a form of compensation. For more details, contact your tax advisor. *

RESEARCHING COMPANIES' GIVING HISTORIES

Want to find out who the biggest corporate givers are? The *Chronicle of Philanthropy* website provides results of its survey on the charitable giving activities of the nation's largest companies. The publication collected data on 180 of the 300 highest ranking Fortune 500 companies. The data shows not only the value of cash and product donations for the past three years, but also which charities the companies supported.

To gather data on the companies that declined to respond to the survey, researchers tapped into the informational tax forms that company foundations must file with the IRS each year. The *Chronicle* cautions that, because the numbers recorded on those forms don't necessarily reflect all of a company's charitable giving, it may be difficult to make comparisons between companies. Changes in accounting methods, mergers and other factors can render year-to-year



comparisons about an individual company's giving tricky, as well. *

IRS ISSUES FORM FOR DETERMINATION REQUESTS

The IRS has published a new form that not-for-profits should use to request determinations — other than initial exemption applications — about their tax-exempt status. Organizations can use Form 8940, "Request for Miscellaneous Determination," for nine specific types of requests, such as advance approval of certain activities and exemption from the Form 990 filing requirements. The instructions for the one-page form indicate the respective information required to support each type of request.



Nonprofits applying for recognition of an exemption and simultaneously requesting advance approval of scholarship procedures or a Form 990 exemption should, however, include the request with their Form 1023, "Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code," rather than filing Form 8940. *