

IRS issues guidelines to help nonprofits avoid complications

WASHINGTON – The calendar might say that the next national elections are more than 15 months away but the Internal Revenue Service thinks it's never too early for nonprofit organizations to start worrying about how political activity might affect their tax-exempt status.

A recent 13-page "revised ruling" outlines 21 situations where election-related activity by 501(c)(3) organizations – as nonprofits are designated by the section of the tax code applying to them – could be seen as a violation of the code's ban on participation or intervention in "any political campaign on behalf of (or in opposition to) any candidate for public office."

But the answers are far from clear-cut, according to guidance offered by the U.S. Conference of Catholic Bishops' Office of General Counsel on the USCCB Web site.

"General guidance cannot anticipate every conceivable fact pattern," said the office that provides legal advice to the USCCB and its committees. "Application of the political campaign intervention prohibition is inherently fact-specific and frequently presents close questions."

For example, a church leader's remarks or writings about a political campaign might or might not put the church's tax exemption at risk, depending on a variety of factors – among them, whether the leader is commenting on a legislative issue or a particular candidate; whether the leader makes clear that he or she is speaking as an individual and not as a representative of the church; whether the organization authorized the leader's actions; and whether he or she is speaking or writing in an official church forum or publication.

Appearances by candidates before church groups or educational materials prepared by the church before an election can put the church's tax exemption at risk, or not, depending on these and other factors – whether all candidates are given equal treatment, whether the materials do or do not state the church's position on topics addressed by the candidates, and whether the church's political activity is consistent throughout the year or is timed to favor one candidate over another during the period preceding an election.

But the USCCB attorneys want Catholic organizations to understand that the IRS'

stand on political activity by nonprofit organizations is not an anti-religious stand and that the First Amendment right to religious freedom does not allow them to say whatever they want.

“Contrary to popular belief, the section 501(c)(3) political campaign intervention is not a manifestation of constitutionally mandated ‘separation of church and state,’” they wrote on the Web site. “The prohibition applies to all section 501(c)(3) organizations, not just churches and religious organizations.”

As a matter of fact, the prohibition was written into the tax code in 1954 at the behest of then-Sen. Lyndon B. Johnson, who reportedly was concerned about support his opponent in the Democratic primary had received from nonprofit organizations. The prohibition on certain political activity also does not violate First Amendment rights, the USCCB lawyers said, because nonprofit organizations can choose between political involvement or the federal tax exemption.

There is “not an absolute prohibition against political activity by tax-exempt organizations,” they note. “Rather, it is a condition placed on receipt of federal tax exemption. Thus, an exempt organization has a choice between involvement in political campaign intervention and the benefits of tax exemption.”

In its 2000 decision in *Branch Ministries v. Rossotti*, the U.S. Court of Appeals for the District of Columbia circuit rejected an argument that the ban on political activity violated a church’s First Amendment rights. In that case, the parent organization for the nondenominational Christian Church at Pierce Creek in Binghamton, N.Y., lost its tax exemption because it ran two full-page ads before the 1992 presidential election urging all Christians to vote against Bill Clinton.

Earlier this summer, the IRS’ Political Activities Compliance Initiative issued its report on the 2006 campaign season, saying it had received 237 complaints alleging political campaign intervention by nonprofit organizations – divided almost evenly between churches and other types of nonprofits – and selected about half of them for further investigation.

Although 60 of the cases from 2006 remain unresolved, in 35 percent of the resolved cases the IRS found no evidence to substantiate charges of improper political intervention, the report said. That includes 10 of the 14 resolved cases against churches in 2006.

Americans United for Separation of Church and State already has filed two formal complaints with the IRS for alleged violations of the ban on campaign intervention

by tax-exempt organizations.

One was against Bill Keller Ministries in St. Petersburg, Fla., over articles on its Web site at www.Liveprayer.com that called a vote for Republican presidential candidate Mitt Romney “a vote for Satan” because of his membership in the Church of Jesus Christ of Latter-day Saints.

“Having Romney as president is no different than having a Muslim or Scientologist as president,” one article said.

In the second complaint, Americans United asked the IRS to investigate the Catholic Diocese of Providence, R.I., over a column by Bishop Thomas J. Tobin declining an invitation to a fund-raising event for Republican presidential candidate Rudy Giuliani.

Bishop Tobin said in the column that he “would never support a candidate who supports legalized abortion.”

The IRS has had no comment on either complaint.