

Election Year Activities for 501(c)(4) Social Welfare Organizations

501(c)(4) organizations have fewer tax law restrictions than 501(c)(3) organizations with regard to political activity. Provided supporting or opposing candidates is not their primary activity, 501(c)(4)s can participate in political (or campaign intervention) activities¹ under federal tax law². However, 501(c)(4)s must also be aware of their obligations under federal and state election law.

As a result of the Supreme Court's decision in *Citizens United v. FEC*, all corporations, including 501(c)(4) corporations, may pay for independent expenditures that encourage the public to support or oppose federal and state candidates. An independent expenditure is any communication that is not coordinated or made with the cooperation, consultation, or at the request of a candidate or political party. Federal election law prohibits corporate entities, including 501(c)(4)s, from making cash or in-kind contributions--including coordinated communications³-- to any federal candidates. Some states, however, permit corporations to make contributions to candidates and to coordinate activities.

Examples of independent election-related activities in which all 501(c)(4)s may engage include:

- Conducting all of the nonpartisan voter education activities in which 501(c)(3)s can engage;
- Supporting or opposing ballot measures;
- Endorsing federal and state candidates;
- Distributing communications to the general public -- including through GOTV activities, voter registration drives, billboards, broadcast ads -- or to the organization's membership in support or opposition to federal or state candidates. The organization can even encourage voters to vote for or against a specific federal or state candidate;
- Asking federal and state candidates to pledge to support the organization's issues if elected;
- Producing candidate voter guides or comparisons of where state and federal candidates stand on the issues ;

¹ Political activity means supporting or opposing candidates for public office or political parties. It does not include lobbying, which 501(c)(4)s can do in unlimited amounts.

² No clear test exists for determining when political activity becomes the organization's primary purpose. To be cautious, a 501(c)(4)'s total expenditures for political activity generally should not exceed 30 to 40 percent. When evaluating the organization's primary purpose, the IRS may also consider the organization's overall activities, including volunteer activities.

³ Federal regulations recognize some activities that may be coordinated with candidates to a limited extent, such as candidate appearances and member communications.

- Creating an affiliated 527 political organization called a “connected PAC” or “separate segregated fund” to make contributions to federal candidates; additionally, many states allow 501(c)(4) organizations to create connected state PACs; and
- Pooling resources to engage in the above activities, subject to federal and/or state disclosure rules and limits.

501(c)(4) organizations that make independent expenditures may be required to file reports (FEC Form 5) disclosing the money spent on the activities (and under limited circumstances the contributors whose money was used to support these activities), and may need to include disclaimers on the communication identifying the organization as the sender for the communication. Nothing in *Citizens United* prohibits the Federal Election Commission or state or local elections officials from imposing these types of disclosure and disclaimer rules.

501(c)(4)s may be subject to a tax on certain political activities. To the extent 501(c)(4)s engage in activities discussed above, they may be taxed. The 527(f) tax is assessed on the lesser of an organization’s investment income or expenses for election-related activities. If a 501(c)(4) does not have investment income, then its tax liability is zero. Investment income includes income from interest, dividends, rent, and royalties.

A 501(c)(4) may avoid the 527(f) tax altogether by creating what is known as a connected PAC or separate segregated fund, a 527 political organization, under the tax code. If a 501(c)(4) conducts all of its partisan political activity out of a separate segregated fund, the 501(c)(4) will have no expenses for election-related activity on which to be taxed.

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