

BAN ON POLITICAL ACTIVITY

By *Anthony Dougherty*



In recent times, the IRS has seen a growth in the number and variety of allegations of violations by section 501(c)(3) tax exempt organizations during election years. The increase in allegations, coupled with the dramatic increase in money spent during political campaigns, has raised concerns about whether prohibited funding and activity are emerging in section 501(c)(3) organizations. Representatives of the IRS have publicly stated that, “If left unaddressed, the potential for charities, including churches, being used as arms of political campaigns and parties will erode the public’s confidence in these institutions.”

Because of increasing political activity in the tax exempt area, the IRS expanded its educational efforts to remind 501(c)(3) organizations about the prohibition on engaging in such political activities. The IRS conveyed this message through press releases, speeches, workshops, IRS Nationwide Tax Forums, and in a letter to national political parties. Perhaps more important, in 2004 the Service initiated the Political Activities Compliance Initiative (“PACI”) project to respond in a faster, targeted fashion to specific credible allegations of political campaign intervention. The objective of this initiative was to promote compliance with the IRC § 501(c)(3) prohibition against political campaign intervention by reviewing and addressing allegations of political intervention by tax exempt organizations on an expedited basis during the 2004 election year.

The Service recently published its summary results of the 2004 PACI. The results were startling. The IRS found that nearly three quarters of the organizations examined under the initiative had engaged in prohibited political activities. This high percentage is a clear indication that the 2004 PACI addressed a significant compliance issue.

The Service examined one hundred thirty two 501(c)(3) organizations. In three cases, the IRS not only substantiated that prohibited political campaign activity occurred, but that activity warranted, and the Service proposed, revocation of the organization’s tax exempt status. In 55 of the cases, the IRS issued written advisories² indicating the Service’s view that prohibited campaign activity had occurred, but that revocation was not recommended. In one case, the service assessed an excise tax. In five (5) cases, the IRS found non-political intervention violations (including delinquent returns). In eighteen (18) cases, the IRS found that the organization did not engage in prohibited political campaign activity. During campaign seasons, the IRS scrutinizes the campaign activities of all 501(c)(3) organizations that it has received complaints about.

The exposure to an IRS examination can be avoided by understanding what your organization can and cannot do when an election campaign is underway.

About Anthony Dougherty, Partner

Anthony is an experienced litigator and trial attorney who specializes in the areas of education law, labor and not-for-profit law, particularly pertaining to religious and charitable institutions. His clients include several religious orders, not-for-profit foundations and private preparatory and post-secondary institutions. He serves as general counsel to Iona College, the Congregation of Christian Brothers and the Eastern Economic Association, an association of economists headquartered in New Rochelle, New York.

Anthony has successfully represented his clients before state and federal agencies including the New York State Division of Human Rights, the Equal Employment Opportunity Commission and the Dormitory Authority of the State of New York. He advises on compliance with federal, state and local employment laws and the requirements of the Internal Revenue Code for qualification for tax-exempt status. Anthony recently obtained a dismissal of a race association discrimination claim from a college on a motion for summary judgment. He regularly writes

(continued on next page)

SOMETIMES YOU CAN PICK YOUR POISON: MEDIATION, ARBITRATION OR LITIGATION?

(continued from previous page)

and speaks on topics relating to not-for-profit organizations, including mergers, consolidations and restructuring of religious congregations.

Prior to joining Tarter Krinsky & Drogin LLP, Anthony was a member of Davidoff & Malito. He earned his Juris Doctor from Brooklyn Law School and is a member of the New York State Bar. He is also admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York. He is a member of the Labor and Employment Law section of the New York State Bar Association and the National Association of College and University Attorneys. He serves on the board of directors for the Christian Brothers Foundation and St. Joseph Residence, Inc. In 2006, Anthony was named to the Board of Directors of the Blanton-Peale Institute, a graduate institution for psychoanalytic training and a non-profit counseling center. Anthony can be reached at adougherty@tarterkrinsky.com.