

Taxation of Exempts

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SOCIAL MEDIA AND CROWDFUNDING— LEGAL ISSUES FOR SECTION 501(c)(3) ORGANIZATIONS

CHRISTOPHER M. HAMMOND

The use of social media and crowdfunding by Section 501(c)(3) tax-exempt organizations can create legal issues for the organizations, including the risk of violating (1) the federal tax law prohibition of political campaign intervention and (2) state fundraising regulations.

Over the better part of the last decade, both the nonprofit ecosystem and the traditional nonprofit's life cycle have been significantly impacted by the proliferation of social media. At its core, social media is the epitome of hyper-efficient mass-networking and mass-promotion. According to the Pew Research Center, 69 percent of the public uses some form of social media,¹ with such usage being predominately associated with eight different platforms.² Moreover, the median American uses three of these eight platforms and many users visit multiple sites daily.³

Use of social media by nonprofit organizations

Certainly, social media is also utilized by nonprofit organizations, including organizations that are tax-exempt via Section 501(c)(3).⁴ For example, National Geographic Society has over 45 million "Likes" on Facebook, while Amnesty International USA has over 4 million followers on Twitter and National Public Radio has over 1 million followers on Instagram. Even much smaller organizations are able to garner strong support in their local communities through these 24/7/365 mediums of networking and promotion.

However, the use of social media creates a newer form of a longstanding problem for these organizations that are strictly regulated by the IRS and other governmental arms: attribution. As a result of this problem, a nonprofit organization may be held accountable for the actions of individuals when they rush to "press send" or "post" without considering the issue. For many individuals—and ostensibly all organizational leaders—it may be the case that social media musings are actually interpreted by the IRS and other regulators to be on behalf of the organizations themselves. In several areas of the law, this attribution can have serious ramifications for nonprofit organizations.

The purposes of this section of the article are to highlight a dangerous area of the law in which organizations experience problematic attribution and to describe ways in which this unwanted attribution may be avoided or, if necessary, mitigated.

General prohibition of political campaign intervention. A practitioner need not look far to review the Code's position on political campaign intervention by 501(c)(3) organizations. Within Section 501(c)(3) itself, the Code provides that an entity may only obtain and maintain such exemption if it "does not participate in, or intervene in (including

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