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 **TEXAS Law**
The University of Texas at Austin
School of Law

ELECTION YEAR ISSUES FOR TAX-EXEMPT ORGANIZATIONS

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Agenda

- Refresher: “the basics” of political activities for tax-exempts
 - Partisan vs. nonpartisan political activities
 - Framework for identifying political activity
 - Specific election year activities
- Considerations: Special concerns for tax-exempt organizations operating within affiliated entity structures
- Evaluating and mitigating risk in affiliated entity structures

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Refresher on Political Activities

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Refresh: Types of Tax-Exempt Organizations

| | 501(c)(3) Private Foundation | 501(c)(3) Public Charity | 501(c)(4) Social Welfare Org | 527 Political Org |
|---------------------------|--|---|---|--|
| Purpose | ▪ Charity, education, religion, science, etc. | ▪ Charity, education, religion, science, etc. | ▪ Social welfare or advocacy (lobbying) | ▪ Political |
| Examples | ▪ Gates Foundation ▪ Robert Wood Johnson Foundation | ▪ Sierra Club Foundation ▪ American Red Cross ▪ Heritage Foundation | ▪ Sierra Club ▪ Heritage Action for America | ▪ Political action committees ▪ Campaign committees |
| Tax Benefits | ▪ Tax exemption ▪ Contributions deductible ▪ Gift tax deduction | ▪ Tax exemption ▪ Contributions deductible ▪ Gift tax deduction | ▪ Tax exemption ▪ Gift tax exemption | ▪ Tax exemption ▪ Gift tax exemption |
| Lobbying | ▪ None | ▪ Limited | ▪ Unlimited | ▪ Rare (and usually taxable) |
| Election-Related Activity | ▪ Can't support or oppose candidates ▪ Nonpartisan activities OK (with limitations) | ▪ Can't support or oppose candidates ▪ Nonpartisan activities OK | ▪ Partisan activity cannot be "primary" activity ▪ Political activity may be taxable | ▪ Primary purpose must be partisan activity |



Today's Topic

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Refresh: How Does the IRS Define “Political Activity”?

- **Very broad definition:** Any “participat[ion] or interven[ion]...in any political campaign on behalf of (or in opposition to) any candidate for public office” is considered electioneering or political activity
 - Determined under a facts and circumstances test
 - IRS has provided examples of what is or is not political, as well as factors it will consider
 - IRS guidance in Revenue Rulings 2004-6 and 2007-41
- **Basic inquiry:** Is the organization signaling, directly or indirectly, through the content or delivery of its communications or activities, that it favors or disfavors any candidate or political party?
- **Partisan vs. Nonpartisan:** **Nonpartisan** election-related educational or civic engagement activity *may not* be considered “political” activity or campaign intervention



What does nonpartisan mean anyways???

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Refresh: Examples of Partisan and Nonpartisan Political Activity

Yes – Partisan Political Activity

- Contribute to candidates
- Expressly support or oppose candidates
- Rate or score candidates on the issues
- Compare organization’s position to candidate’s
- Provide other assistance to candidates (in-kind contributions)
- Support other organizations’ political activity
- Target voters (by demographic or region) to produce a particular electoral outcome

No – Not (Necessarily) Partisan Political Activity

When consistent with the organization’s mission:

- Advocate for issues (**but** look out for wedge issues)
- Educate voters about issues or candidates
- Promote civic engagement – how to participate in elections
- Protect voters
- Produce legislative scorecards
- Educate all candidates
- Register voters without regard to voting inclination
- Get out the vote activities (GOTV)



Only if you do not favor one “side” over the other

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Title search: Election Year Issues for Tax-Exempt Organizations

First appeared as part of the conference materials for the

41st Annual Nonprofit Organizations Institute session

"Election Year Issues: Political Engagement and Affiliated Structures"