

**DESCRIPTION OF THE PROVISIONS OF H.R. 3865, THE
“STOP TARGETING OF POLITICAL BELIEFS
BY THE IRS ACT OF 2014”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 11, 2014

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3865, the “Stop Targeting of Political Beliefs by the IRS Act of 2014,” on February 11, 2014. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3865, the “Stop Targeting of Political Beliefs by the IRS Act of 2014”* (JCX-6-14), February 7, 2014. This document can also be found on our website at www.jct.gov.

A. Applicable Standard for Determining Whether an Organization is Operated Exclusively for the Promotion of Social Welfare

Present Law

Section 501(c)(4) organizations in general

Section 501(c)(4) provides a tax exemption for civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.² Treasury regulations provide that an organization is operated exclusively for the promotion of social welfare if it is engaged primarily in promoting in some way the common good and general welfare of the people of a community.³ An organization is not operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations that are operated for profit.⁴

Political campaign activities of section 501(c)(4) organizations

Treasury regulations further provide that the promotion of social welfare does not include “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office” (herein, “political campaign intervention”).⁵ However, social welfare organizations are permitted to engage in political campaign intervention so long as the organization is primarily engaged in activities that promote social welfare.⁶

Whether an activity constitutes political campaign intervention (and thus does not promote social welfare) depends on all the facts and circumstances of the particular case.⁷ The rules concerning political campaign intervention apply only to activities involving candidates for elective public office; the rules do not apply to activities involving officials who are selected or appointed, such as executive branch officials and judges.

² Sec. 501(c)(4). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

³ Treas. Reg. secs. 1.501(c)(4)-1(a)(1) and (2)(i).

⁴ Treas. Reg. sec. 1.501(c)(4)-1(a)(2)(i).

⁵ Treas. Reg. sec. 1.501(c)(4)-1(a)(2)(ii).

⁶ See Rev. Rul. 81-95, 1981-1 C.B. 332.

⁷ See, e.g., Rev. Rul. 2007-41, 2007 -25 I.R.B. 1421 (June 18, 2007) (analyzing 21 different factual scenarios involving section 501(c)(3) charitable organizations for political campaign intervention); Rev. Rul. 81-95, 1981-1 C.B. 332 (referencing section 501(c)(3) standards in determining whether activities of a section 501(c)(4) organization constitute political campaign intervention).

Similar rules apply for determining whether other types of section 501(c) organizations have engaged in political campaign intervention, including charities (section 501(c)(3)), labor and horticultural organizations (section 501(c)(5)), and business leagues (section 501(c)(6)). However, while section 501(c)(4), (5) and (6) organizations may engage in some political campaign intervention without jeopardizing exempt status, section 501(c)(3) organizations are prohibited from engaging in any political campaign intervention.⁸

The lobbying and advocacy activities of a section 501(c)(4) organization generally are not limited, provided the activities are in furtherance of the organization's exempt purpose.

Proposed regulations relating to the political campaign activities of section 501(c)(4) organizations

On November 29, 2013, the Internal Revenue Service and the Department of the Treasury published proposed regulations regarding the political campaign activities of section 501(c)(4) organizations.⁹ The proposed regulations seek to replace the present-law facts-and-circumstances test used in determining whether a section 501(c)(4) organization has engaged in political campaign intervention with an enumerated list of activities that constitute political campaign activities (and which therefore do not promote social welfare).¹⁰

The proposed regulations replace the political campaign intervention reference in the existing section 501(c)(4) regulations (*i.e.*, “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office”) with a new defined term, “candidate-related political activity.”¹¹ Candidate-related political activity means: (1) communications that express a view on, whether for or against, the selection, nomination, election, or appointment of one or more clearly identified candidates (often referred to as express advocacy communications); (2) certain public communications (as defined) within 30 days of a primary election or 60 days of a general election that refer to one or more clearly identified candidates, or in the case of a general election one or more political parties; (3) communications the expenditures for which are reported to the Federal Election Commission; (4) contributions (including gifts, grants, subscriptions, loans, advances, or deposits) of money or anything of value to or the solicitation of contributions on behalf of a candidate, a section 527 political organization, or a section 501(c) organization that engages in candidate-related political activity; (5) conduct of a voter registration drive or “get-out-the-vote” drive; (6) distribution of any material prepared by or on behalf of a candidate or by a section 527 political organization; (7)

⁸ Sec. 501(c)(3).

⁹ Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG-134417-13, 78 Fed. Reg. 71535 (November 29, 2013); incorporating Prop. Treas. Reg. secs. 1.501(c)(4)-1(a)(2)(ii), (a)(2)(iii), and (c).

¹⁰ Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG-134417-13, 78 Fed. Reg. 71535 (November 29, 2013), p. 71536.

¹¹ Prop. Treas. Reg. secs. 1.501(c)(4)-1(a)(2)(ii) and (iii).

preparation or distribution of a voter guide that refers to one or more clearly identified candidates, or in the case of a general election to one or more political parties; and (8) hosting or conducting a forum for candidates within 30 days of a primary election or 60 days of a general election.¹²

For purposes of defining candidate-related political activity, the proposed regulations define the term “candidate” to mean “an individual who publicly offers himself, or is proposed by another, for selection, nomination, election, or appointment to any federal, state, or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not such individual is ultimately selected, nominated, elected, or appointed,” including officeholders who are the subject of a recall election;¹³ this includes certain judicial and executive branch appointments.

The proposed regulations apply only to section 501(c)(4) organizations.¹⁴ Other section 501(c) organization (including section 501(c)(3) charitable organizations, section 501(c)(5) labor and horticultural organizations, and section 501(c)(6) business leagues) will continue to use present-law rules concerning political campaign intervention.

The proposed regulations are not immediately effective. They are proposed to be effective on the date they are published in the Federal Register as final regulations.¹⁵

Description of Proposal

The proposal provides that the standards and definitions as in effect on January 1, 2010, which are used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4), shall apply for determining the tax-exempt status of organizations under section 501(c)(4).

The proposal also provides that the Secretary of the Treasury may not issue, revise, or finalize any regulation (including the November 29, 2013 proposed regulations described above), revenue ruling, or other guidance that is not limited to a particular taxpayer relating to the

¹² Prop. Treas. Reg. sec. 1.501(c)(4)-1(a)(2)(iii)(A).

¹³ Prop. Treas. Reg. sec. 1.501(c)(4)-1(a)(2)(iii)(B)(1).

¹⁴ Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG-134417-13, 78 Fed. Reg. 71535 (November 29, 2013), p. 71537.

¹⁵ Prop. Treas. Reg. sec. 1.501(c)(4)-1(c). In the notice of proposed rulemaking, the IRS seeks comments on a number of issues, including: (1) whether the existing regulation that provides that an organization is operated exclusively for social welfare if it is engaged primarily in promoting in some way the common good and general welfare of the people of a community should be modified; and (2) whether the rules included in the proposed regulations should be extended to other section 501(c) organizations or to section 527 political organizations. Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG-134417-13, 78 Fed. Reg. 71535 (November 29, 2013), p. 71537.

standards or definitions used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4).

The proposal applies with respect to any organization claiming tax-exempt status as an organization described in section 501(c)(4) that was created on, before, or after the date of enactment.

The proposal sunsets such that it does not apply after the one-year period beginning on the date of enactment.

Effective Date

The proposal is effective on the date of enactment.

B. Revenue Effect of the Proposal

The proposal is estimated to result in a negligible revenue loss over the budget period 2014-2024.