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It's That Time of Year Again

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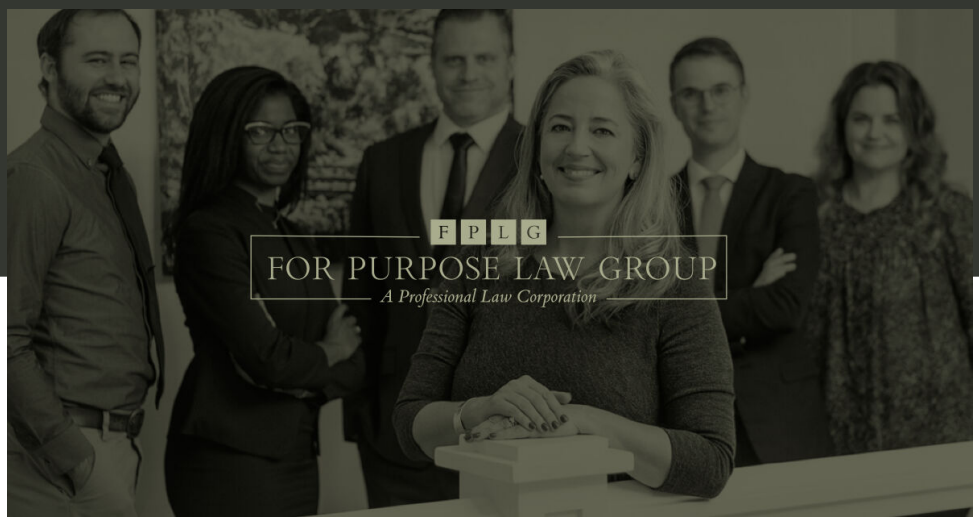

It's that time again.

No, not summer vacation.

It's election season in the United States. Actually, election season seems to begins the day after the last election. With each passing week, the airwaves become more and more saturated with annoying political ads, culminating in the non-stop coverage in early November.

It seems that everyone has an opinion. But what's important to remember is that 501(c)(3) organizations aren't allowed to have opinions on candidates or take action in elections.

What can happen if they do? The organization can lose its tax exemption and penalty-type taxes can be imposed on both the 501(c)(3) and its directors and officers.

The Basic Rule: Deceptively Simple

The rule prohibiting political activity by a nonprofit organization is contained in a short phrase – just 27 words. It's tacked on at the end of a brief paragraph (with 132 words total) in the federal tax code of 1954. That critical paragraph – section 501(c)(3) of the Internal Revenue Code – defines which nonprofits are entitled to the most favored tax-exempt status.

Unless you're a lawyer — and in particular, a lawyer who specializes in nonprofit organizations — you've probably never read section 501(c)(3). Or if you've read it, it was a long time ago and you don't remember it.

But since this is the source of everything that governs most charitable organizations' tax exemption, it's worth taking about 30 seconds to look at these very important 132 words: *Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or*

international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), ***and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.*** (bolding added)

The bolded phrase now includes four words – "or in opposition to" – that were added in the 1980's to clarify that prohibited electioneering includes activities by organizations either supporting *or* opposing a candidate.

The gist of this eligibility paragraph is that organizations qualify if they are "organized" *and* operated exclusively" for one or more of the listed purposes. But those (otherwise eligible) applicants will be disqualified if any of the following apply:

- any of its "net earnings" are diverted away "for the benefit of any private … individual"
- if it plans to engage in "lobbying" as a "substantial part of its activities
- if it engages *at all* in prohibited "political campaign" ("electioneering") activities

The Devil is in the Details, Though

A 501(c)(3) organization engages in disqualifying "political campaign" activity if:

1. It's participating or intervening in a campaign;
2. The campaign is for an individual who is a candidate;
and
3. The election is one for public office.

Sounds simple?

No, it's not. And determining whether a particular 501(c)(3) is violating this rule is a matter of looking at all the facts and circumstances for a "thorough understanding of the facts relating to an activity." Each element of this 3-part analysis of the "political campaign" prohibition has been the subject of IRS regulations , rulings like this one, and court decisions.

It's complicated. And the consequences of getting it wrong are severe. So if your organization is considering plunging into the political fray even a little bit, stop. Treat it like a red light at an intersection. Don't even think about starting up and rolling down that road unless and until you get a clear green light from a legal or tax professional.

Of Course, There are Exceptions

It's true that what's prohibited is absolutely, positively not allowed — but as with most things in life, there are a few important exceptions.

First, the political activity prohibition applies when your organization jumps in on one side or another of the election. It doesn't apply, though, where the organization engages in truly nonpartisan voter

education or registration activities.

Second, it's important to remember that the prohibition applies to the *organization*, and to its personnel while they are "on the clock." But the individuals connected with the organization — even founders, directors, and key employees — have a first amendment right to be involved in political activities and to voice personal opinions on elections and candidates. But this can be a treacherous tightrope act: these people must take care to act on their own time and to carefully disassociate these activities and opinions from the organization.