# 501(c)(3) May Not Administer Payroll Deduction Plan for Its Industry's PAC

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In a technical advice memorandum (TAM), the Internal Revenue Service ruled that a 501(c)(3) exempt organization's administration of an automatic payroll deduction plan for its employees to contribute to a political action committee (PAC) sponsored by a hospital industry trade association constituted participation or intervention in a political campaign prohibited by section 501(c)(3) of the Internal Revenue Code.[1] The IRS concluded in that the excise tax under section 4955 of the Internal Revenue Code should be imposed. Curiously, the question of whether the 501(c)(3)'s tax-exempt status should be revoked was not raised.

The 501(c)(3) was the parent corporation of several organizations providing health care services. A tax-exempt trade association representing hospitals and health care systems set up a PAC that supported state candidates of all political parties for state legislative offices. The trade association offered a payroll deduction plan by which individuals could elect to have a contribution deducted automatically and forwarded to the PAC.

In his capacity as chairman of the trade association, the president/CEO of the 501(c)(3) committed himself to the trade association's goal of increased participation in the PAC by trade association members. As part of that effort, the 501(c)(3) and its president/CEO conducted an active campaign to encourage the (c)(3)'s employees to contribute voluntarily to the PAC through the payroll deduction plan. The campaign included:

- Discussion of the plan by management at regularly scheduled meetings and, in some cases, meetings held exclusively for this purpose;
- Discussion by management of the plan on an individual basis with employees;
- Distribution of donation cards to employees and collection by management of signed cards;
- Inclusion in the employee newsletter of information on the plan and deduction forms; and
- Production of a video, shown at the employee meetings, that featured the 501(c)(3)'s president/CEO explaining the impact of political input on the hospital industry.

The trade association reimbursed the 501(c)(3) for some of the costs of the campaign, i.e. the video production and duplication and printing of the donation cards, but not for others, such as the cost of the president/CEO's time in producing the video or the employees' time devoted to meetings at which the plan was discussed, and costs allocable to the portion of the newsletter devoted to the plan.

The statutory authority upon which the TAM relied was the Internal Revenue Code's prohibition on a 501(c)(3) "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements) any political campaign on behalf or (or in opposition to) any candidate for public office."[2] While the TAM recognized that the 501(c)(3) itself had not endorsed candidates for public office, the IRS deemed the 501(c)(3)'s support of the PAC, which did contribute to candidates, to be an indirect and illegal method of doing what the (c)(3) could not do directly.

The IRS rejected the 501(c)(3)'s attempt to cast its support of the payroll deduction plan as merely an allowable way to improve employee morale. That rationale had been successful in a previous ruling where the IRS had held that a corporation's costs associated with a payroll deduction plan allowing contributions to any political entity were allowable business expenses.[3] The IRS distinguished this earlier ruling, however, by pointing out that there, the recipient candidate or political organization were of the employee's choosing, while in this case, "the [one and only] PAC is selected and endorsed by the employer who has a vested interest in electing candidates who share its 'vision and priorities for healthcare.'"[4]

Moreover, the IRS found that the actions of the 501(c)(3)'s president/CEO in supporting and endorsing the PAC went beyond expressing his personal opinion in his individual capacity, which is allowable under the Code despite his position with the 501(c)(3). The IRS concluded that by using the organization's financial resources, facilities, personnel, and publications, engaging in political activity at official organization functions, and by not stating that the actions taken were in their individual capacities and not on behalf of the organization, the activities of the president/CEO and other officials of the 501(c)(3), should be attributed to the 501(c)(3) itself. Because the IRS concluded that those activities violated the ban on 501(c)(3)s participating or intervening in a political campaign, it imposed an excise tax on the expenditures for the administration of the payroll deduction plan under Code section 4955.

**Does this IRS ruling provide any new guidance on political activity rules for 501(c)(3) CAAs?**

Yes and no. Most CAAs probably already assumed that payroll deduction plans for PAC contributions were impermissible. However, this ruling provides additional guidance on the types of political activity conducted in the workplace, whether through a payroll deduction plan or otherwise, including use of the organization's facilities and personnel, that could lead to trouble for a 501(c)(3). The safest rule to follow is to keep campaign fundraising, whether for PACs, political parties, or candidates, out of the office and official CAA functions; all such activity should be conducted by individuals in their personal capacity outside of working hours and off CAA property, without use of CAA computers, e-mail, etc. Moreover, to comply with the Hatch Act,[5] CAA employees covered by the Hatch Act, including all CAA executive directors, should not seek political contributions from employees whom they supervise at any time or place, even outside the office or working time.

One additional note, however, for unionized CAAs. In an earlier ruling, the IRS allowed a 501(c)(3) to administer a payroll deduction plan under a collective bargaining agreement to collect and remit its employees' voluntary contributions earmarked for political action committees by the employees' unions.[6] In that case, the union, rather than the 501(c)(3), chose the PAC, the 501(c)(3) played no part in endorsing the payroll deduction plan, the union reimbursed all 501(c)(3) expenses for administering the plan, and the interests of the PACs selected by the union would likely have political interests differing from those of the 501(c)(3). However, before agreeing to such an arrangement, unionized CAAs should consult with their lawyers to be sure the arrangement will pass muster with the IRS.

[1] Technical Advice Memorandum 200446033 (June 14, 2004).
[2] 26 U.S.C. § 501(c)(3).
[3] See Rev. Rul. 62-156, 1962-2 C.B. 47.
[4] TAM 200446033 at 12.
[5] 5 U.S.C. § 1501 et seq. and 42 U.S.C. § 9818(b)(1).
[6] Private Letter Ruling 200151060 (Sept. 27, 2001).