

Request for Comments Regarding Need for Guidance Clarifying Application of the Internal Revenue Code to Use of the Internet by Exempt Organizations

Announcement 2000-84

The Internal Revenue Service is considering the necessity of issuing guidance that would clarify the application of the Internal Revenue Code to use of the Internet by exempt organizations. Accordingly, the Service is soliciting public comment concerning the application of Code provisions governing exempt organizations to activities they conduct on the Internet. The Service has made no final decision concerning the need for additional guidance of general applicability and may conclude no further action is necessary.

BACKGROUND

Exempt organizations, like other organizations, are increasingly turning to the Internet to carry on their activities. By publishing a webpage on the Internet, an exempt organization can provide the general public with information about the organization, its activities, and issues of concern to the organization, as well as immediate access to websites of other organizations. An exempt organization can provide information to subscribers about issues of concern to the organization as well as enable people with common interests to share information via the Internet through a variety of methods (such as mailing lists, news groups, listserves, chat rooms, and forums).

General Issues

Exempt organizations use the Internet to carry on activities that otherwise can be conducted through other media, such as radio or television broadcasts, print publications, or direct mailings. The growing use of the Internet by exempt organizations raises questions regarding whether clarification is needed concerning the application of the Code to Internet activities. The questions include the following:

- Does a website constitute a single publication or communication? If not, how should it be separated into distinct pub-

lications or communications?

- When allocating expenses for a website, what methodology is appropriate? For example, should allocations be based on webpages (which, unlike print publications, may not be of equal size)?
- Unlike other publications of an exempt organization, a website may be modified on a daily basis. To what extent and by what means should an exempt organization maintain the information from prior versions of the organization's website?
- To what extent are statements made by subscribers to a forum, such as a listserv or newsgroup, attributable to an exempt organization that maintains the forum? Does attribution vary depending on the level of participation of the exempt organization in maintaining the forum (e.g., if the organization moderates discussion, acts as editor, etc.)?

Political and Lobbying Activities

Charitable organizations described in section 501(c)(3) may not intervene in political campaigns and may only attempt to influence legislation as an insubstantial part of their activities. If the charitable organization makes an election under section 501(h), an expenditure test is applied in determining whether the organization has engaged in substantial lobbying activities, with different limits applicable for direct and grassroots lobbying.

When a charitable organization engages in advocacy on the Internet, questions arise as to whether it is conducting political or lobbying activity, and if so, to what extent. This situation is further complicated by the affiliation of charitable organizations with other organizations engaging in political or lobbying activities on the Internet. The ease with which different websites may be linked electronically (through a "hyperlink") raises a concern about whether the message of a linked website is attributable to the charitable organization. The Service is considering whether clarification is needed on how to apply the prohibition on political campaign intervention and substantial lobbying activity for charitable organizations engaging in activities on the Internet. Questions include the following:

- What facts and circumstances are relevant in determining whether informa-

tion on a charitable organization's website about candidates for public office constitutes intervention in a political campaign by the charitable organization or is permissible charitable activity consistent with the principles set forth in Rev. Rul. 78-248, 1978-1 C.B. 154, and Rev. Rul. 86-95, 1986-2 C.B. 73 (dealing with voter guides and candidate debates)?

- Does providing a hyperlink on a charitable organization's website to another organization that engages in political campaign intervention result in *per se* prohibited political intervention? What facts and circumstances are relevant in determining whether the hyperlink constitutes a political campaign intervention by the charitable organization?
- For charitable organizations that have not made the election under section 501(h), what facts and circumstances are relevant in determining whether lobbying communications made on the Internet are a substantial part of the organization's activities? For example, are location of the communication on the website (main page or subsidiary page) or number of hits relevant?
- Does providing a hyperlink to the website of another organization that engages in lobbying activity constitute lobbying by a charitable organization? What facts and circumstances are relevant in determining whether the charitable organization has engaged in lobbying activity (for example, does it make a difference if lobbying activity is on the specific webpage to which the charitable organization provides the hyperlink rather than elsewhere on the other organization's website)?
- To determine whether a charitable organization that has made the election under section 501(h) has engaged in grass roots lobbying on the Internet, what facts and circumstances are relevant regarding whether the organization made a "call to action"?
- Does publication of a webpage on the Internet by a charitable organization that has made an election under section 501(h) constitute an appearance in the mass media? Does an email or listserv communication by the organization constitute an appearance in mass media if it is sent to more than 100,000 people and fewer than half of those people are

members of the organization?

- What facts and circumstances are relevant in determining whether an Internet communication (either a limited access website or a listserv or email communication) is a communication directly to or primarily with members of the organization for a charitable organization that has made an election under section 501(h)?

Advertising and Other Business Activities

Many exempt organizations receive payment from companies to display advertising messages on the organization's website. Some exempt organizations have banners on their websites containing information about and a link to other organizations in exchange for a similar banner on the other organizations' website.

Exempt organizations may also provide hyperlinks on their websites to companies that sponsor their activities. Some organizations receive payments based upon a percentage of sales for referring customers to another website, while others receive payments based upon the number of persons who use the hyperlink to go to the other webpage. In addition, a number of exempt organizations use the Internet as another outlet for their own sales activity.

Some organizations operate "virtual trade shows," an attempt to replicate trade shows on the Internet. Some of these virtual trade shows simply consist of hyperlinks to industry suppliers' websites, while others also include displays with educational information.

The Service is considering whether clarification is needed regarding whether the income received from these activities is subject to the unrelated business income tax, and if so, how the income and expenses related to the activity are calculated. Questions include the following:

- To what extent are business activities conducted on the Internet regularly carried on under section 512? What facts and circumstances are relevant in determining whether these activities on the Internet are regularly carried on?
- Are there any circumstances under which the payment of a percentage of sales from customers referred by the exempt organization to another website would be substantially related under section 513?

- Are there any circumstances under which an online “virtual trade show” qualifies as an activity of a kind “traditionally conducted” at trade shows under section 513(d)?

Comments concerning the application of section 513(i), which governs the treatment of qualified sponsorship payments, to Internet activities were requested in connection with the Notice of Proposed Rulemaking (REG–209601–92) published in the Federal Register on March 1, 2000.

Solicitation of Contributions

There are numerous Code provisions regulating the solicitation and receipt of charitable contributions. For example, exempt organizations not eligible to receive tax-deductible charitable contributions are required under section 6113 to disclose in certain solicitations for contributions that such contributions are not deductible for federal income tax purposes as charitable contributions. Charitable organizations that receive certain “*quid pro quo*” contributions in excess of \$75 are required under section 6115 to provide a written statement to the donor that indicates that the charitable deduction is limited to the amount paid by the donor in excess of the value of the goods or services provided by the organization and that provides a good faith estimate of that value. Under section 170(f)(8), donors making contributions of \$250 or more to a charitable organization must substantiate the contribution with a

contemporaneous written acknowledgment from the charitable organization in order for the deduction to be allowed.

An increasing number of exempt organizations solicit contributions on the Internet. In some instances, the organization’s website merely indicates where to send contributions to the organization. In other cases, the organization is able to accept contributions on the Internet, either directly or through a third party that provides a secure connection for credit card transactions. The Service is considering the need for clarification regarding such activities, including the following:

- Are solicitations for contributions made on the Internet (either on an organization’s website or by email) in “written or printed form” for purposes of section 6113? If so, what facts and circumstances are relevant in determining whether a disclosure is in a “conspicuous and easily recognizable format”?
- Does an organization meet the requirements of section 6115 for “*quid pro quo*” contributions with a webpage confirmation that may be printed out by the contributor or by sending a confirmation email to the donor?
- Does a donor satisfy the requirement under section 170(f)(8) for a written acknowledgment of a contribution of \$250 or more with a printed webpage confirmation or copy of a confirmation email from the donee organization?

The Service is soliciting public comment regarding the need for additional guidance clarifying the application of the Code to exempt organizations’ Internet activities. The Service requests comments not only on the situations described above, but also on any other issues concerning application of provisions of the Code in a fair and neutral manner to exempt organizations’ Internet activities.

Public comments should be submitted in writing on or before February 13, 2001. Comments should be sent to the following address:

Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224
Attn: Judith E. Kindell
T:EO

Comments may also be sent electronically via the Internet to *TE/GE-Exempt-2@irs.gov.

DRAFTING INFORMATION

The principal author of this announcement is Judith E. Kindell of Exempt Organizations. For further information regarding this announcement contact Judith E. Kindell at (202) 622-6494 (not a toll-free call).