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VIA FIRST CLASS MAIL

Complaint: National Education Association (EIN # 53-0115260), Failure To Report Taxable Political Activities

Landmark Legal Foundation (“Landmark”) requests that the Internal Revenue Service (“IRS” or “the Service”) investigate the conduct and tax filings of the National Education Association (“NEA”).

Summary

Internal Revenue Code (“IRC”) § 501(c)(5) tax exempt labor organizations, including the NEA, are required to disclose fully to the public, union members, non-union fee payers and the IRS, the extent of the organization’s political activities and expenditures. Moreover, political activities and expenditures made in furtherance of such activities are taxable to those organizations unless they are segregated from general operations revenue and conducted through a separate segregated fund. IRC § 527(f)(1) (2010).

The NEA acknowledges on its 2008 IRS Form 990 tax return that it has spent general operating funds on taxable political activities.¹ As demonstrated in this complaint, at least a portion of these funds are subject to taxation and are required to be reported on an IRS Form

¹ Exhibit 1, NEA 2008 Form 990. Since 1994, the NEA has reported zero dollars in political expenditures. This is the first time the NEA has reported making any political expenditures on its tax return.

1120 POL. Although the NEA reports spending general operating funds on taxable political activities, it has neglected to file a Form 1120 POL and failed to pay the accompanying tax of these expenditures.

Specifically, in its 2008 tax return (Form 990), covering the period from September 1, 2008 through August 31, 2009, the NEA reports \$7,714,284 in “political expenditures.” The NEA describes these expenditures as follows:

Communications to members concerning identifiable federal and nonfederal candidates. ***Mobilizing members to vote for endorsed federal and nonfederal candidates.*** Public legislative advocacy referring to identifiable nonfederal candidates. (2008 NEA Form 990 Schedule C, Exhibit 2. Emphasis added.)

Therefore, according to information supplied in its own tax return, NEA expends nearly \$8 million on three types of activities it classifies as “political expenditures.” The NEA does not however, characterize any of these activities as “exempt function activities,” which would make these expenditures subject to taxation under the IRC. As demonstrated below, at least one and possibly two, of the above referenced activities constitute taxable “exempt function” activities and are subject to taxation.

Although the NEA has reported these expenditures, it has failed to pay the appropriate tax and should therefore be sanctioned.² Moreover, Landmark requests that the IRS begin an immediate investigation to determine the extent to which the NEA is using general treasury funds to mobilize its members to engage in partisan activities.

Relevant Law

Unions – or “labor organizations” –are generally exempt from paying income taxes to the federal government. IRC § 501(c)(5) (2010). This exception does not apply, however, to the funds a labor organization spends on political activity. Political activity, or “exempt function” activity is defined as:

...[T]he function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected or appointed. IRC § 527(e)(2) (2010).

² Landmark Legal Foundation has filed extensive complaints with the Service, documenting the NEA’s practice of using general treasury funds for taxable political activities. In 2005, these complaints helped spur an IRS examination of the NEA. In point of fact, during his concluding address before the NEA national convention, former NEA General Counsel Robert Chanin stated, “During the Bush Administration, for example, NEA was audited by the Internal Revenue Service repeatedly.” In light of being recently subjected to multiple examinations, the NEA should be particularly cognizant of the myriad of taxation issues arising out of its behavior.

When a labor organization engages in political activity (exempt function expenditures), it must report such activity as an itemized expenditure on its 990 income tax return.³ Moreover, it must pay taxes on the general revenues expended for its political activities. To illustrate, when a labor organization receives a dollar in dues from one of its members, and places that dollar in its general treasury, then no tax is owed to the IRS. If the labor organization then takes the dollar from its general treasury and uses it for political activity, then that dollar becomes taxable income and the expenditures must be reported. IRC § 527(f)(1) (2010), 26 CFR § 1.527-6(a) (2010).

There are certain expenditures related to political campaigns that are not considered “exempt.” These types of expenditures fall within a safe harbor provision of the law and do not result in a taxable event. A labor organization is permitted to expend general treasury funds without incurring tax liability on activities that are considered “nonpartisan.” Specifically, the applicable “safe harbor” provision of § 1.527 states:

Expenditures for nonpartisan activities by an organization to which [this section applies] are not expenditures for an exempt function. Nonpartisan activities include voter registration and get-out the vote campaigns. To be nonpartisan voter registration and get-out-the-vote campaigns ***must not be specifically identified by the organization with any candidate or political party.*** (Emphasis added.) 26 CFR § 1.527-6(b)(5) (2011).

The requirement that a get-out-the-vote campaign cannot be affiliated with any candidate or political party is reiterated in the Service’s *Exempt Organizations-Technical Instruction Program for FY 2003*, “to come within the exception, nonpartisan voter registration and ‘get-out-the-vote’ campaigns must not be specifically identified by the organizations with any candidate or party.” John Francis Reilly and Barbara A. Braig Allen, “*Exempt Organizations-Technical Instruction Program for FY 2003, ‘Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations.*”

Service regulations further provide an exception from taxation for activities allowed under the Federal Election Campaign Act (“FECA”). 26 CFR 1.527-6(b)(3) (2011). Specifically, § 44b(b)(2) of the FECA pertains to the following activities: (1) internal communications with members and their families; (2) conduct nonpartisan registration and get-out-the-vote campaigns and; (3) the establishment, administration, and solicitation of contributions to separate segregated funds. 2 U.S.C. 441b(b)(2) (2010).

Finally, “indirect expenses” – defined as those expenses associated with overhead and record keeping that are necessary to support direct function activities – are not subject to taxation. 26 CFR 1.527-6(b)(2) and 1.527-2(c)(2) (2011).

³ Political expenditures must be reported on Schedule C of a labor organization’s tax return. “Political Expenditures” are defined as expenditures made for political campaign activities which includes “all activities that support or oppose candidates for elective federal, state or local public office.” See, IRS TE/GE Division, Office of Exempt Organizations, 990 Redesign Glossary. The instructions are clear, “political campaign activity does not include any activity to encourage participation in the electoral process, such as voter registration or voter education, ***provided that the activity does not directly or indirectly support or oppose any candidate.***” Id. (Emphasis added.)

In sum, an organization avoids tax liability by engaging in any of the above referenced activities. When an organization expends funds to conduct partisan political activities directed at the general public, those funds are taxable under IRC 527(f)(1) (2010).

The NEA's Most Recent Tax Return Admits General Treasury Fund Expenditures For Taxable Political Activities.

On its "Schedule C" for its tax return for fiscal year 2008 (covering the time period September 1, 2008 to August 31, 2009) NEA reports that it made \$7,714,284 in political expenditures. It describes these expenditures as follows:

Communications to members concerning identifiable federal and nonfederal candidates. ***Mobilizing members to vote for endorsed federal and nonfederal candidates.*** Public legislative advocacy referring to identifiable nonfederal candidates. (Exhibit 1.) (Emphasis added.)

"Mobilizing members to vote for endorsed federal and nonfederal candidates" does not fall within any of the "safe harbor" provisions of 26 CFR 1.527-6. The expenses made to support such activities are thus subject to taxation. While funding communications to membership falls within the safe harbor provision provided by the FECA, mobilizing members to vote for endorsed federal and nonfederal candidates constitutes partisan activity. As such, the portion of the reported \$7,714,284 spent to "mobilize members" is subject to taxation. NEA crosses a line when it expends funds to support activities to mobilize members to vote for specifically identified candidates.

Moreover, expending funds for "public legislative advocacy" that references "identifiable nonfederal candidates" may constitute exempt function expenditures. If the content of the advocacy influences or attempts to influence the selection, nomination, election, or appointment of any individual to public office, then expenditures made to produce this advocacy may be subject to taxation.

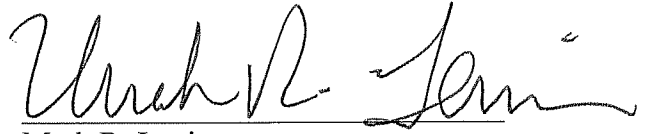
Conclusion

NEA's failure to file an 1120 POL and pay appropriate taxes, appears to violate Service regulations and should be investigated immediately. Furthermore, pursuant to I.R.C. 501(a), the Service should conduct a comprehensive financial investigation to determine the full extent of the political activities and expenditures of the NEA. Where appropriate, the IRS should impose fines and penalties, including possible revocation of the tax exempt status of the NEA.

Respectfully submitted,

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