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## Nonprofit Update: Nonprofit Website Links Could Lead to Revocation of Exempt Status

By Laura A. Lo Bianco and Christian M. Olson

Organizations recognized as exempt under Internal Revenue Code section 501(c)(3) may jeopardize their tax-exempt status by failing to carefully monitor not only the content of their own web pages but also the content of web pages to which they are linked. This fact is illustrated in a recent Technical Advice Memorandum issued by the Internal Revenue Service (the "TAM"). Although the TAM focused on prohibited campaign intervention activities, the lessons learned from the TAM can be applied to any activity inconsistent with a 501(c)(3)'s exempt purposes.

In the TAM, a 501(c)(3) organization was found to have engaged in prohibited campaign intervention activities because its website linked to a related 501(c)(4)'s web pages containing statements of support for candidates for office. The 501(c)(4)'s web pages were hosted by the 501(c)(3)'s website and designed as a separate subset of the 501(c)(3)'s site. The 501(c)(4) paid for its proportional share of the website costs pursuant to a cost sharing agreement existing between the two organizations. All of the 501(c)(4)'s web pages contained a banner with the 501(c)(3)'s logo on top and links to other pages within the 501(c)(3)'s website. They also contained the 501(c)(3)'s disclaimer and copyright notices. The pages designated as 501(c)(4) web pages contained candidate questionnaires and endorsements of candidates for public office.

The IRS determined that the 501(c)(4)'s web pages were "virtually indistinguishable" from the 501(c)(3)'s pages. As a result of the presentation of the web pages, the IRS found that the 501(c)(3) distributed the candidate questionnaires and endorsements, in violation of the prohibition on political campaign intervention activities. The fact that the 501(c)(4) reimbursed the 501(c)(3) for the costs associated with those pages did not persuade the IRS to a different conclusion.

This TAM demonstrates that the IRS is actively scrutinizing the Internet activities of 501(c)(3) organizations to ensure that those activities further the exempt purposes of the organization and not any other purpose. If a 501(c)(3)'s website links to a web page containing prohibited content, the IRS may treat the 501(c)(3) as if it directly engaged in prohibited activities, even though the 501(c)(3) may have no control over the content of those web pages.

Exempt organizations may reduce the likelihood of engaging in prohibited activities through their websites by routinely monitoring the content of any linked web pages (including links to related organizations) and by adjusting or removing links from their websites as necessary. Organizations should consider the following when reviewing linked content:

(a) whether any content posted on the linked pages may be considered campaign intervention activities;

(b) whether any activities conducted on the linked pages would constitute unrelated business for the 501(c)(3) and resulting in

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taxable income to the 501(c)(3); or

(c) whether the link results in private benefit or private inurement to the other organization.

If a 501(c)(3) shares a web master with a related organization, it should insure that:

- each organization has a separate URL and home page;
- the “look” of each organization’s website is different (for example, contain different colors, different content); and
- the websites are set up differently (for example, have different navigation links within the site, not link to the same pages).

Keep in mind that the IRS will consider all relevant facts and circumstances in determining whether a 501(c)(3) has engaged in prohibited activities through the links on its web pages. The bottom line is that 501(c)(3) organizations cannot indirectly engage in activities that are otherwise limited (such as unrelated business activity) or prohibited (such as political campaign intervention activity) by linking to independent websites. We are available to assist in reviewing exempt organization websites and links to related organizations to ensure compliance with the law.

## Fennemore Craig’s Nonprofit group now has a blog!

The Nonprofit and Tax-Exempt Organizations group at Fennemore Craig has launched the Fennemore Craig Nonprofit Law Blog. The new blog will feature recent developments in federal and state laws applicable to nonprofit and tax-exempt organizations, discussions of relevant legal issues, news updates in the nonprofit community, and other pertinent information that will assist nonprofit and tax-exempt organizations in maintaining their tax-exempt status, complying with the law, improving corporate governance practices, and achieving charitable objectives. Readers are invited and encouraged to contact members of the Nonprofit and Tax-Exempt Organizations group at Fennemore Craig with any questions or comments they may have regarding information posted on the blog. Readers can periodically check for blog updates at <http://www.fclaw.com/blogs/nonprofit> or subscribe to automatic updates via RSS feed.

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