

Thomas Antonucci Discusses IRS's Test for Impermissible Political Intervention

Tax Notes

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Thomas W. Antonucci, a partner in Wiley's Corporate and Exempt Organizations practices, was quoted in a June 16 *Tax Notes* article about a lawsuit asking a federal court to declare the IRS's test for impermissible political intervention as unconstitutional. A Texas-based social welfare group – considered an exempt organization (EO) – filed a complaint on May 20 in the U.S. District Court for the District of Columbia.

The group is seeking declaratory relief and challenging the constitutionality of the facts and circumstances test in Rev. Rul. 2004-6, which was used by the Internal Revenue Service (IRS) to deny the group 501(c)(4) status, according to *Tax Notes*. The IRS analyzed the group's expenditures under the rule and concluded it was not eligible for the tax status because it engaged in a large amount of political campaign intervention. The group argues that the test is vague and unconstitutional, *Tax Notes* reported, citing a portion of the complaint.

The article points out that while some believe the lawsuit is aimed at preserving donor privacy, other EOs would like the IRS to provide clearer rules.

Mr. Antonucci told *Tax Notes* that the IRS' regulation of EO communications crosses ideological lines, noting that the agency has attempted to provide guidance on political campaign intervention in other revised rulings and in various materials it has published over time.

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"But the guidance is consistent only in saying, 'It depends,'" Mr. Antonucci said. "The IRS tells us that there are a number of different factors that should be considered, but it doesn't clarify how the factors should be weighed or analyzed in real-world scenarios – they only give examples and situations that contain the most extreme set of facts and circumstances."

Mr. Antonucci acknowledged a gray area in the IRS's guidance where EOs are often left to guess if the agency will interpret its activities as political.

"I think that many exempt organizations – whether they are conservative or liberal – would appreciate more clarity and transparency on this issue," Mr. Antonucci said. "Given the IRS's track record, it is understandable that some organizations are asking the courts to weigh in."

To read the article, click here (*subscription required*).