



February 27, 2014

The Honorable John A. Koskinen
Commissioner of Internal Revenue
CC:PA:LPD:PR (REG-134417-13)
Room 5205
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Via Federal eRulemaking Portal

Subject: Comments on IRS NPRM, REG-134417-13 -“Draft Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities”

Dear Commissioner Koskinen:

The American Foundry Society (AFS) and its more than 8,000 members respectfully submit the following comments in response to the Notice of Proposed Rulemaking (NPRM) for the “Draft Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities” (IRS NPRM, REG-134417-13) issued by the Internal Revenue Service (IRS) and the Treasury Department on November 29, 2013.¹

Although the NPRM addresses proposed rules governing 501(c)(4) entities specifically, and thus does not apply directly to AFS (a trade association under 26 U.S.C. § 501(c)(6) and our education affiliate, the AFS Institute (26 U.S.C. § 501(c)(3)), the NPRM questions whether “the same or a similar approach should be adopted in addressing political campaign activities of other section 501(c) organizations” and, specifically, “the advisability of adopting this approach in defining activities that do not further exempt purposes under sections 501(c)(5) and 501(c)(6).”²

AFS strongly urges the IRS **not** to adopt the proposed rules for 501(c)(4) organizations and not to extend them to other 501(c) organizations. The NPRM proposes to treat many legislative advocacy and civic activities as “candidate-related political activity” (CRPA), which the IRS up to

¹ Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71,535 (Nov. 29, 2013).

² *Id.* at 71,537.

this point has not considered to be political activity restricted for tax-exempt organizations. Given that any rule adopted for 501(c)(4) entities pertaining to political activity could be applied by the IRS and tax law practitioners by analogy (if not directly) to other tax-exempt organizations, we believe that the adoption of the proposed rules would severely restrict the advocacy and civic activities of 501(c)(6) trade associations, like AFS, thereby undermining their core purpose.³

I. Association & Industry Overview

The American Foundry Society (AFS) is the major trade and technical association for the North American metalcasting industry. It was founded in 1896 and today is comprised of more than 8,000 members representing over 3,000 metalcasting firms, including foundries, their suppliers and customers. In addition, AFS has more than 44 professional and 37 student chapters throughout North America.

The organization exists to provide information and services that strengthen the metalcasting industry for the ultimate benefit of its customers and society. AFS seeks to advance the sciences related to the manufacture and utilization of metalcasting through research, education and dissemination of technology. AFS also provides leadership in the areas of environmental, safety and health, government affairs, marketing, management and human resources for the metalcasting industry. As part of its mission, the association advocates on behalf of its members for public policies that support a globally competitive foundry industry. AFS and its members are involved in, and are impacted by, a wide variety of legislative and regulatory issues in the areas of, but not limited to energy, the environment, tax, health care, trade, safety and labor relations.

AFS is the world's largest publisher of metalcasting-related books, technical papers and reports and houses the world's most-expansive library of metalcasting reference material. The educational arm of the association, the AFS Institute, hosts more than 30 practical courses, seminars and workshops annually on all metalcasting processes, materials and disciplines, both in-person and onsite at AFS headquarters, in-plant seminars and online.

The U.S. foundry industry is comprised of 1,987 foundries located across the nation. The practice of melting and casting metal into solid forms has served society's needs for more than 5,000 years. Metal castings are the foundation for all other manufacturing, and are a vital building block for every nation's economic wealth. The U.S. foundry industry continues to be a cornerstone of the American economy.

More than 90% of all manufactured, durable goods and 100% of all manufacturing machinery contain or utilize engineered metal castings during their manufacture. From critical components for aircrafts and automobiles to power generation and surgical equipment, cast metal products are integral to our economy and our way of life. Countless sectors in the United States depend upon the existence of metal castings, including those related to automotive, transportation, construction, agriculture, medical supplies, computers, sporting goods, recreation, musical

³ See, e.g., Rev. Rul. 2004-6 (applying a unitary approach to determining political campaign intervention for 501(c)(4), 501(c)(5), and 501(c)(6) entities).

instruments, air conditioning, textiles, plumbing, gas and electrical transmission, renewable energy, mining, defense and other sectors vital to our economic growth and national security.

Our industry provides employment for over 200,000 men and women directly and supports thousands of other jobs indirectly. Metalcasting plants are found in every state. Our industry is dominated by small businesses, with over 80% of U.S. metalcasters employing fewer than 100 workers and many are still family-owned and operated.

II. Key Concerns with the NPRM and Application of Candidate-Related Political Activity to Other Types of Tax-Exempt Organizations

- A. The initial guidance offered by the Treasury Department and the IRS is intended to address qualification requirements for tax-exempt as a social welfare organization under Section 501(c)(4) of the Internal Revenue Code. However, the rulemaking also seeks comments regarding whether standards similar to those proposed for 501(c)(4) groups should be applied to other types of tax-exempt organizations as well. The NPRM asks whether current regulations for Section 501(c)(5) labor groups and Section 501(c)(6) trade and professional organizations should be amended to provide that exempt purposes under those regulations do not include “candidate-related political activity” as defined in the proposed rule.

AFS believes Section 501(c)(6) organizations would be negatively impacted by the expanded definition of candidate-related political activity in the proposed rulemaking. Unlike the rules that govern 501(c)(4) activity, there is no ambiguity in terms of permissible activities for 501(c)(6) organizations. AFS and the other 501(c)(6) organizations are permitted to exercise their free speech rights to advocate on issues that impact their members and industry, and there are clear rules permitting some political campaign activity in support or in opposition to federal or state candidates for public office, so long as it’s not the organization’s primary activity.

- B. The expanded definition of CRPA in the IRS rulemaking would significantly impact our trade association’s ability to communicate legislative or regulatory developments to its members. The definition of CRPA is triggered if exempt organizations’ communications contain references to elected officials, to voting, or to candidates’ positions on the issues. In fact, the NPRM would categorize any public communication that so much as mentions a public official who happens to be a candidate for reelection, and is made within 60 days before a general election or 30 days before a primary, as restricted candidate-related political activity.⁴ If these proposed rules were extended (whether directly or indirectly) to trade associations such as AFS, they would severely undermine our association’s ability to communicate with its members, with the public, and with public officials about important policy issues and to advocate for our members’ interests, which the IRS and United States Tax Court have recognized is a core activity for 501(c)(6) entities.⁵

⁴ NPRM at 71,539.

⁵ See Rev. Rul. 61-177; *Assoc. Indus. of Cleveland v. Comm’r*, 7 T.C. 1449 (1946).

For example, we regularly issue legislative alerts advocating support or opposition to legislation sponsored by a member of Congress. Under this proposal, if such an alert were sent within 60 days of a general election about legislation sponsored by a Member who is running for re-election, it would be considered “candidate-related political activity.” Legislative issues are not tied to any election cycle and restricting issue advocacy activities that organizations conduct – regardless of their proximity to any election – is a clear restriction on speech.

- C. The NPRM would also apply the scope of CRPA to materials posted on an organization’s website, which would cause communications related to advocacy posted on a website that previously was not CRPA to become transformed into CRPA unless such content were removed during the 30-day and 60-day time windows.⁶

AFS also archives some of its posted content about legislative and regulatory policy issues going back several years. If the proposed rules were to apply to 501(c)(6) entities, we would have to constantly monitor our archived content and remove certain posts to ensure that we do not exceed the restrictions imposed by the IRS. This would be a huge administrative burden to constantly update our website, which would be compounded by the fact that the time windows are tied not only to general elections, but to primaries as well, of which there are fifty for elections for federal office.⁷

- D. AFS regularly invites elected officials to address our membership. These events provide an opportunity for our members to meet with and to hear first-hand from federal officials who are directly involved in enacting policies that will impact AFS members and the overall business climate in our country. Like the other activities discussed above, the proposed rules would severely restrict our ability to sponsor such meetings by treating them as CRPA if we feature a public official up for reelection within 30 days of a primary or 60 days of a general election.⁸ Again, this is unjustified, as the IRS previously has determined that tax-exempt organizations could sponsor such events without implicating the restrictions on political campaign intervention.⁹
- E. AFS is deeply concerned that the NPRM poses a severe infringement on AFS’s First Amendment right to speak, on the rights of its members, the public, and their elected representatives to be the recipients of the association’s speech.¹⁰ Furthermore, the

⁶ NPRM at 71,539. The federal campaign finance statute, by contrast, does not include Internet content under the definition of “electioneering communications,” nor does it include many of the other forms of communications that would be covered by the IRS’s proposed rules. *See* 2 U.S.C. § 434(f)(3)(A)(i).

⁷ *See, e.g.*, Federal Election Commission, 2014 Electioneering Communications Periods, *at* http://www.fec.gov/info/charts_ec_dates_2014.shtml (last visited Feb. 20, 2014).

⁸ NPRM at 71,540.

⁹ Rev. Rul. 2007-41.

¹⁰ *Martin v. Struthers*, 319 U.S. 141, 143 (1943) (the First Amendment “embraces the right to distribute literature, and necessarily protects the right to receive it.”).

proposed rules would regulate speech activities that form the core purpose of tax-exempt entities like AFS.

- F. It is important to note that 501(c)(6) organizations, such as AFS, are membership organizations, and are not reliant on contributions from anonymous sources. In fact, under the most recent changes to the Lobbying Disclosure Act (*Honest Leadership and Open Government Act - 2007*), associations must disclose the identity of any members who contribute more than \$5,000 per quarter to the organization's advocacy budget and who have an active role in planning the organization's lobbying activities. Additionally, the portion of dues allocated for a 501(c)(6) organization's lobbying or campaign-related political activity is not tax-deductible.

III. Conclusion

After careful review of the NPRM, AFS believes that the proposed rules would negatively impact our association and the ability of tax-exempt groups to mobilize their members and the public to voice their opinions to their elected officials. Furthermore, the proposal will inhibit AFS' ability to sponsor basic civic activities that encourage a more participatory democracy. In addition, it would create significant confusion to have one set of definitions for political activity by 501(c)(4)s and an entirely different set for 501(c)(3)s, 501(c)(5)s, 501(c)(6)s, and other tax-exempt organizations.

For these reasons, AFS strongly urges the IRS not to adopt these proposed rules for any type of tax-exempt entity. If you have any questions regarding our comments, please contact me at jcall@afsinc.org or (800) 537-4237 or Stephanie Salmon in our Washington Office ssalmon@afsinc.org or (202) 452-7135.

Sincerely,



Jerry Call
CEO
American Foundry Society