(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: November 24, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

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## **DEPARTMENT OF THE TREASURY**

## Internal Revenue Service

26 CFR Parts 1, 53 and 301 [TD 8628]

RIN 1545-A077

# Political Expenditures by Section 501(c)(3) Organizations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations regarding excise taxes, accelerated tax assessments, and injunctions imposed for certain political expenditures made by organizations that (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a). These regulations reflect changes to the law that were enacted as part of the Revenue Act of 1987.

**EFFECTIVE DATE:** These regulations are effective December 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Morton or Paul Accettura, (202) 622–6070 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

## Background

On December 14, 1994, proposed regulations §§ 53.4955-1, 301.6852-1, and 301.7409-1 under sections 4955, 6852 and 7409 were published in the Federal Register (59 FR 64359). In addition, amendments were made to regulations under other sections in order to reflect the effects of sections 4955, 6852, and 7409. Proposed regulation amendments in §§ 1.6091-2, 53.4963-1, 53.6011-1, 53.6071-1, 53.6091-1, 301.6211-1, 301.6212-1, 301.6213-1, 301.6861-1, 301.6863-1, 301.6863-2, 301.7422-1, and 301.7611-1 were also published in the Federal Register (59 FR 64359). No public hearing was requested or held. The IRS received two comments on the proposed regulations, only one of which offered substantive suggestions. The IRS and

the Treasury Department have considered the public comments on the proposed regulations, and the regulations are adopted as revised by this Treasury decision.

### **Explanation of Provisions**

The regulations provide guidance with respect to sections 4955, 6852 and 7409. The sanctions in these sections apply to all organizations described in section 501(c)(3). Before sections 4955, 6852 and 7409 were enacted in 1987, revocation of recognition of exemption was the sole sanction available against political intervention by public charities. Section 4955 was modeled on the section 4945 excise tax on political expenditures (taxable expenditures) by private foundations, while sections 6852 and 7409 provide new sanctions against flagrant political expenditures and flagrant political intervention, respectively.

One comment on the proposed regulations requested that the regulations define in additional detail the term *political expenditure* and provide specific examples of activities that constitute intervention or participation in a political campaign for or against a candidate. Section 53.4955-1(c)(1) of the proposed regulations provides that any expenditure that would cause an organization that makes the expenditure to be classified as an action organization in accordance with  $\S 1.501(c)(3)-1(c)(3)(iii)$  is a political expenditure within the meaning of section 4955(d)(1). By referring to the long standing action organization regulations, § 53.4955–1(c)(1) of the proposed regulations ties the definition of *political expenditure* in section 4955 to existing IRS and judicial interpretations of when an organization participates or intervenes in a political campaign on behalf of or in opposition to any candidate for public office in violation of the requirements of section 501(c)(3). The IRS and the Treasury Department believe this direct connection between section 4955 and section 501(c)(3) correctly implements the intent of Congress as expressed in the statute and the legislative history. To the extent that further guidance is needed on the interpretation of the terms political expenditure under section 4955 and intervening in political campaigns under section 501(c)(3), the IRS and the Treasury Department believe such guidance should be given in connection with the requirements for tax exemption under section 501(c)(3). Therefore, the final regulations have not revised  $\S 53.4955-1(c)(1)$ .

Another comment suggested that the regulations specify whether there were

circumstances under which conduct would result in the imposition of a tax under section 4955 but not in revocation of exemption under section 501(c)(3). According to the statutory language and the legislative history of section 4955, the addition of that section to the Internal Revenue Code did not affect the substantive standards for tax exemption under section 501(c)(3). To be exempt from income tax as an organization described in section 501(c)(3), an organization may not intervene in any political campaign on behalf of any candidate for public office. Consistent with this requirement, section 4955 does not permit a de minimis amount of political intervention. Therefore, the final regulations have not been revised. However, there may be individual cases where, based on the facts and circumstances such as the nature of the political intervention and the measures that have been taken by the organization to prevent a recurrence, the IRS may exercise its discretion to impose a tax under section 4955 but not to seek revocation of the organization's taxexempt status.

One comment raised questions about the interpretation of section 4955(d)(2), which relates to organizations formed primarily to promote the candidacy of a particular individual. The comment requested clarification of the standard for determining whether an organization "is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office" under section 4955(d)(2). The comment also requested clarification of the meaning of the phrase "availed of" in the section 4955(d)(2) reference to organizations availed of primarily to promote an individual's candidacy for public office. The comment further requested examples of expenses which have the primary effect of promoting public recognition or otherwise primarily accruing to the benefit of a candidate or a prospective candidate.

The legislative history of section 4955 provides that the determination of whether an organization's primary purpose is the promotion of the candidacy or prospective candidacy of an individual for public office is based on all relevant facts and circumstances. The proposed regulations follow the legislative history. The IRS and the Treasury Department believe that, if more detailed guidance is necessary, it would be more appropriate to provide it in a form that allows for the consideration of a fuller range of facts and circumstances. Therefore, the final regulations have not been revised.

The comment also asked whether section 4955(d)(2) adds anything to the