



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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Facts:

This is in response to T's letter dated October 12, 2002, and subsequent correspondence requesting rulings under section 4955 of the Internal Revenue Code.

T was founded in 1973, incorporated under the laws of x, as a research and educational institution whose mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. T is an organization described in section 501(c)(3) of the Code, and is recognized as a public charity, by a determination letter issued by the Service in 1973.

T's 185 employees pursue its mission by performing research, by addressing key policy issues, and effectively marketing these findings to its primary audience: Members of Congress, key Congressional staff members, policy makers in the executive branch, the media, and the academic and public policy communities.

Governed by an independent Board of Trustees, T relies almost exclusively on the private financial support of the general public, namely individuals, foundations, and corporations, for its revenues. From its earliest development efforts, T's senior management realized that mail solicitation is a successful way to reach a large number of potential donors. Direct mail uses a two-fold approach by first soliciting prospects to become donors, then regularly sending mail solicitation to its "house file" for actual revenues. All donors in T's house file have been acquired through prospecting. At present, T has approximately r donors in its house file who have given money in the past twelve months.

T retains the services of outside vendors to take responsibility for all aspects of its direct mail program, including developing concepts, writing themes, collecting funds, compiling results from survey and polls, and purchasing and exchanging mailing lists, with T exercising necessary supervision or review. T and its legal counsel approve the text of the copy to ensure that it is accurate and does not violate the law.

T's most successful direct mail fund raising letters are those utilizing certain public figures such as certain members of Congress and certain other public figures having high visibility or name recognition with the public. All signatories are chosen for various reasons, but primarily because their views on important topical issues coincide with those T believes are held by its supporters.

T's fund raising letters are sent out on the "letterhead" of the signatory and describe and praise the educational research of T on a particular issue, e.g. health care, national defense, and/or social security. The letter ends with a request for a charitable, tax-deductible contribution to T. T also uses other mediums of fund raising, such as videotapes or advertising.

T asserts that the fund raising letters are released at random, without timing them to a particular signatory's candidacy for public office, and (generally) without regard to the home state of a particular signatory. In some instances, a signatory may be an incumbent member of Congress who is up for re-election every two years. In some instances, it may be a senator who may not be up for re-election for up to six years.

For purposes of this ruling, T has provided specific information as to two proposed fund raising letters by two different signatories with differently worded letters.

One letter is signed by Senator A. Senator A is known for his positions on reducing the size and intrusiveness of government, reforming Congress, and family values.

Senator A's views on reform of Congress coincide with the views of T. Senator A's impact as a fund raising signatory on this issue is based on his well known efforts while in Congress, in support of term limits, and his work on campaign reform. T has not determined whether the letters will be released as prospecting or housefile mailings. In either event, approximately 250,000 letters will be released at several different times in the future.

T has provided a sample copy of the fund raising letter signed by Senator A. The letter has Senator A's name at the top centered and in capitalized large print. Underneath the name is written "United States Senate" centered and with margins separating this writing from the

name above and the text that follows. Several lines after this writing appears the sentence **“Would you give up a \$133,600 a year job, a million dollar pension and great travel perks?”** written in bold. This sentence is also centered. The letter is then addressed “Dear Friend.” The text of the letter reads as follows:

Most people would not. And this is the problem conservatives face in reforming our legislature and hammering away at “politics as usual” in Washington.

When more than 250 members of Congress and 100 Senators can become “pension millionaires” by staying in office, what incentive do they leave? With guaranteed pay raises that don’t require votes, what incentive do they have to reform?

With high pay, great benefits and generous perks, the pot has grown quite sweet for Members of Congress and Senators over the years and is breeding millionaires. It’s no wonder the liberals want to protect the status quo.

I did not come to Washington in (date) to benefit from this system. In fact, I am working with a broad group of conservatives to keep working for a Congress run by citizens interested in serving you. Along with our leadership, we have won some battles already, but there is still much left undone.

I believe Term Limits would fix the problem of careerism. But until we can vote them into law, conservatives must take other paths to reform our legislature. That’s why I am working to get rid of five Congressional perks that are costing taxpayers tens of millions per year. Cutting these perks tells those in power that you are tired of politics by “sound bite,” and that you are serious about government of, by, and for the people.

Our team has made progress since taking power and there are many in Washington who agree with us. A leader among them is a long time voice for reforming our legislature – T (name spelled out) – and I am working closely with them to create a legislature that spends more time listening and less time spending.

The following is a list of five Congressional perks that we want to cut in order to end the career mentality in our legislature and return our country to moral and economic prosperity. These five recommendations are giant steps in reforming Congress and the Senate and preserving the original version of the Founding Fathers:

1. Members of Congress and the Senate should not have their retirement paid for by taxpayers. Let them save their own dollars for retirement.
2. No more pay raises for Congress and the Senate without voting on them.
3. Eliminate “Franking” of mass mailings. This “free” mail is paid for with tax dollars and is an unfair campaign advantage for incumbents.
4. Require Members of the House to return millions of dollars in frequent flier benefits to the government just as the Senate and Executive Branch do.
5. Stop the use of special travel on military aircraft unless no commercial options are available.

Now that you know the steps I want to take, I want to tell you about T and why I am counting on them to help reform our legislature.

For almost 30 years now, T has been the beacon of free enterprise, limited government and a strong national defense on Capitol Hill. Their experts do the hard work looking at our huge government, breaking down what it really does, what its costs and creating real world solutions. Their work is respected and quoted widely by both conservatives and liberals in the government and media.

I have been a fan of T for years, but it was during my first campaign for Congress that I came face-to-face with how effective their work is.

I relied quite often on a book they had sent me called (name deleted). Which as since been updated each year. It helped me educate the public about conservative ideas and give them hard facts on nearly every issue - from tax relief, welfare reform, education reform, to crime and punishment issues.

After winning my race, I attended an orientation session run by T. It was so well attended, that (an educational institution) canceled a competing seminar they've been running for the last three decades!

At that conference, countless experts and guest speakers, including (names deleted)– gave valuable insights on how to curb Washington's appetite for your dollars.

Help that again proved invaluable to me and my fellow conservatives as our leadership led to a 100-day blitz to take back our government. During that time, we made a real start in cleaning up our legislature by voting on Term Limits, enacting term limits for key positions, and cutting the operating budget.

Now it is time to push forward with the next phase of reform. The five reforms outlined on your fact sheet are achievable steps toward ending the career mentality plaguing our legislature and crippling its ability to lead.

If you want a better legislature, you can help today by sending a tax deductible check of \$20, \$50, or \$75 membership in T to help fund the nationwide education campaign to reform our government.

Our goal is to permanently change how Washington does business. We've had some successes, but now is the time to keep pressing forward for reforms that give all us more opportunity and personal freedoms.

And when I leave the Senate, I know T will still be guarding your freedoms against those who would like to take them away.

So please help today. Your tax-deductible check is the most effective ammunition in the battle to reign in our legislature and keep making it more responsive to your vision of America.

Serving you,

A (name spelled out)

United States Senate

P.S. Million dollar pensions and pay raises without voting create career politicians. To give you safer streets, better schools, newer jobs and a brighter future, conservatives on Capitol Hill must keep cleaning house. The next step is eliminating five specific perks that are described in this letter.

Attached to the letter is T's "Reply Memorandum" which provides a form in which the recipient of the fund raising letter may respond by checking the box as to his or her amount of payment to T and also indicating the means of payment. Also on this page is a box providing a two question survey conducted by T.

A second letter on which T has requested a ruling is proposed fund raising letter for signature by Congressman B, who is presumed to be a candidate for the United States House of Representatives. It is assumed that 250,000 of the letters will be released over a specified period including dates prior to the election.

Congressman B espouses conservative values with respect to moral reform. For purposes of this ruling, it is assumed that his views as expressed in the fund raising letter also generally coincide with those of T.

The B letter is on T's letterhead, which is typed in large print and centered at the top of the page. A few lines following the letterhead, in bold print and aligned with the left margin is B's name. Underneath the name, also in bold, is "**Member of Congress.**" The text of the letter reads as follows:

Dear fellow Americans:

When I was growing up in (location deleted) everyone believed in family, church and community. My parents taught me to work hard, play fair, make responsible choices, and even when you don't, when you buy your bed, you sleep in it.

Nowadays, the rules seem to have changed. Now it's work as little as possible, get someone else to take responsibility and get the government to pay your way.

And look at the results.

Illegitimacy has become an epidemic, with disastrous consequences for society, and for the children who have to grow up without a father.

Drugs and alcohol are ravaging families and communities. Crime holds citizens in fear. People rely on the government instead of themselves, parents abdicate responsibility for their children, and schools produce kids who know all about condoms and self-esteem but can hardly read. Popular culture gives us violent films and degrading music.

It's obvious that America is on the wrong track. And we're out of time to set it right again.

I'd like to know what you think about how America got off the track and what we can do about it. And so would T, America's leading conservative think tank.

That's why we are asking you to fill out the enclosed national survey, (title deleted).

The Survey is part of a significant project I'm involved with in T, called s.

We are relying on the support of people like you.

Restoring America is not a one-shot easy task. People's hearts and souls need to change. Decades of decline have to be reversed.

But we've got to make a start. And where T and I want to start is by fighting the destructive ways that big government keep us from solving our problems.

We Americans are an amazing people. We created a political system based on liberty. We abolished slavery and segregation. We've built a country with more freedom and opportunity than any nation in history, where thousands of dreams come true every day.

So I know that we can solve our current problems if we have the opportunity.

But big government stands directly in our way. Government programs created many of our social problems in the first place by making millions of people dependent, robbing them of their self-reliance, and penalizing them for getting married and for getting married and forming families.

And now that we are in this terrible mess, big government acts as a barrier to solving our problems.

For example, our taxes are so high that millions of women have been forced into the workplace just to pay the family tax bill. Many of these women would rather be home raising their children and we'd all be better off with more children brought up in their own families.

But big government needs those high taxes to support its monstrous appetite.

Another example: We know that practicing a faith is the number one way to lift the poor out of poverty, create stable families, decrease crime, and even improve health. Faith-based schools have already saved many children who attend them, and could save many more if given a chance.

Through misguided Supreme Court decisions and rigid bureaucratic attitudes, nothing connected with government can be "contaminated" by religion.

Government schools can't teach moral values, government-funded charities can't use religion as a way to help alcoholics or drug addicts, sex education programs can't give teenagers a faith-based viewpoint.

These examples are just the tip of the iceberg. That's why it's so clear to me, until we get big government out of the way, we'll never get America on the right track.

I'm working with T on their s because they work so effectively to fight government intrusiveness and promote private solutions to our problems.

For example, thanks to T we know the facts about the incredible benefits of practicing religion. Their report on the subject (name deleted) was cited in literally hundreds of articles, interviews, and commentaries.

The report showed, for example, that church attendance is the most important predictor of marital stability and happiness practicing a faith drastically lowers the incidence of suicide, drug-abuse, out-of-wedlock births, crime and divorce.

T also publicizes the ways people are finding to restore morality and good citizenship in its magazine (name deleted). I've personally been inspired by stories about places such as (name deleted), a Bible-based program that successfully challenges addicted women to change, and (name deleted) which tutors inner-city children while giving them faith-based character

These stories show the power of deep moral beliefs to change lives. They are a direct challenge to the big-government secular outlook of the media and liberals in Congress and the Senate.

In addition, T is directly tackling the government interference that helps keep America on the wrong track. They're

- Fighting for fundamental tax reform that will lower your tax rates and give child tax credits – two steps that will enable many mothers to stay at home.
- Fighting to allow poor children to choose to attend faith-based schools with opportunity scholarships.
- Fighting to cut the size and scope of the federal government, so it won't be able to poke its nose into every nook and cranny of our lives.
- Fighting to allow taxpayers to direct some of their taxes to the private charities of their choice.
- Fighting to end discrimination against the faith-based programs, lift obstacles to adoption, and a host of other measures that will give the American people the power to solve our problems.

But liberals and liberal organizations like the National Education Association and the ACLU can't stand the idea that private, faith-based action is the answer to our problems, rather than the government imposed solutions so dear to their hearts.

So these liberals will fight our proposals to the bitter end, no matter how many innocent children and poor people are hurt.

Which side do you stand on? Are you for the conservatives restoring America by getting government off our backs, and allowing us to turn to our solutions, including faith-based answers?

Or do you want more of the liberals' secular, government dominated system that has brought us to our present state of moral decline?

T and I need you to take a stand with us, by taking these two actions:

First, fill out the enclosed survey: (name deleted).

And second, when you return your survey, please enclose a contribution to help T with its s.

T's president, xxx, tells me they will need \$(dollar amount) for s in the next 90 days.

T is a private organization that receives no government funds. It relies on voluntary contributions from people like you to carry out its programs.

I urge you to give \$25, \$35, or \$50 to this all important project.

If you are in a position to give more - - \$100, \$200, or even \$500, I pray you will do this.

I know from having worked with T over the last several years that this organization is extraordinarily effective. I would not ask you to send your hard earned money if I didn't believe T would spend it wisely.

My friend, when I was a kid, we relied on family, church, and community, not the government. If we are successful in renewing America, we can see those days again.

Sincerely

B (name spelled out)

Member of Congress

P.S. Our moral and cultural decline is proceeding so rapidly that if we do not reverse it in the next two years I fear America will never get back on track. T's s is turning us in the right direction by showing that private action based on morality, not government is the answer – and working to remove government barriers to moral renewal we need.

I urge you to support s to the best of your ability with your survey and your contribution.

As to both fundraising letters, T has represented that it will not mail the fundraising letters into the jurisdiction where the signer is or may become a candidate for office. Thus the fundraising letters with A's signature will not be sent to recipients residing in the state where A is a candidate for the Senate. Further, the fundraising letters with B's signature will not be sent to recipients residing in the congressional district where B is a candidate for the U.S. House of Representatives. For purposes of this ruling it is assumed that both A and B are candidates for office.

It is also represented that the responses to the survey contained in T's fundraising letters will not be made available to A or B. Finally, it is stated by T as a fact that nothing in either fundraising letter suggests or encourages the reader to make a contribution to the signer, as opposed to T.

T has requested the following rulings:

1. T's use of Senator A's letter as a signatory on the fund raising letter signed by him, in the manner described above, does not constitute campaign intervention within the meaning of section 4955 of the Code.
2. T's use of Senator B as a signatory on the fund raising letter signed by him, in the manner described above, does not constitute campaign intervention within the meaning of section 4955 of the Code.

LAW AND ANALYSIS:

Section 501(c)(3) of the Internal Revenue Code provides for recognition of exemption of organizations organized and operated exclusively for charitable, religious, educational, and other stated purposes; no part of the net earnings of which inures to the benefit of any private shareholder or individual; no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(3)(i) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Section 1.501(c)(3)-1(c)(3)(iii) of the regulations provides that an organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term candidate for public office means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such candidate.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or person controlled, directly or indirectly by such private interests.

Section 4955(a)(1) of the Code imposes on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. This tax shall be paid by the organization. In 1987, Public Law 100-203 added Code section 4955 effective for tax years beginning after December 22, 1987.

Section 4955(d)(1) of the Code provides, in general, that the term political expenditure, means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for political office.

Under situation 3 and 4 of Rev. 78-248, 1978-1 C.B. 154, the exempt organization is held to be engaged in the participation or intervention in a political campaign because the organization's questionnaire or voters guide shows bias in favor of one candidate or another.

Rev. Rul. 80-282, 1980-2 C.B. 178, holds that the publication of the organization's newsletter concerning a broad range of political issues did not constitute the participation or intervention in a political campaign under the specific facts of that ruling.

As indicated above, it is assumed that A is a candidate for office.

An organization may be found to have participated or intervened in a political campaign even though it is the organization's intention, in conducting such activities, to further its exempt purpose. In Rev. Rul. 67-71, 1967-1 C.B. 125, the Service held that the organization's activity in evaluating the qualifications of all potential candidates, and then selecting and supporting a particular slate of candidates, constitutes participation in a political campaign. The Service reached this conclusion notwithstanding that the selection process may have been completely objective and unbiased and was intended primarily to educate and inform the public about the candidates. Similarly, the Second Circuit in The Association of the Bar of the City of New York v. Commissioner, 858 F2d 876 (2d Cir, 1988), cert. denied, 490 U.S. 1030 (1989), held that the organization's activity in rating candidates for judicial office, even though nonpartisan and in the public interest, constituted participation or intervention in a political campaign.

Rev. Rul. 76-456, 1976-2 C.B. 151, describes an organization having an educational purpose of elevating the standards of ethics and morality that prevail in the conduct of campaigns for election to office. However, if the organization solicits the signing or endorsement of its code of fair campaign practices by candidates, it will fail to qualify for exemption because of such activity (and subsequent publication thereof), which constitutes the participation or intervention in a political campaign which may not be excused or avoided merely because that the organization regarded its activity as furthering its exempt purpose.

Based on the authority cited in the preceding paragraphs, an organization is not excused from acts of political campaign intervention because the organization had a "good" purpose. Political campaign intervention is not overcome by a "good" purpose.

For example, in both Rev. Rul. 67-71 and Bar of the City of New York, supra, it was clear that the intervention had some value to the public and was not necessarily motivated by purely partisan intentions. In Rev. Rul. 67-71, it was clearly stated that the information regarding which candidate was best qualified "was intended primarily to educate and inform the public about the candidates." In Bar of the City of New York, supra, it was clear that the Second Circuit considered the ratings of judicial candidates based on their legal background to be of value.

As to whether any particular letter constitutes campaign intervention, the determination of whether a public communication made by, or on behalf of, an organization constitutes intervention in a political campaign for purposes of section 501(c)(3) of the Code is made on the basis of all the surrounding facts and circumstances. See Rev. Rul. 78-248, cited above. This determination for purposes of section 501(c)(3) does not hinge on whether the communication constitutes "express advocacy" for Federal election law purposes. Rather for purposes of

section 501(c)(3), one looks to the effect of the communication as a whole, including whether support for, or opposition to, a candidate for public office is express or implied.

In Rev. Rul. 80-282, the Service held that the publication of the organization's newsletter concerning a broad range of political issues did not constitute the participation or intervention in a political campaign. One issue of the newsletter is devoted to the listing of the voting records of all incumbent members of Congress on selected legislative issues together with an expression of the organization's position on such issues. The publication also indicates whether the congressional member voted in accordance with the organization's position on the issue. The newsletter is nonpartisan and will not refer to elections, campaigns or candidates. The Service contrasted the holding in this ruling to that of situation 3 and 4 of Rev. Rul. 78-248. The distinguishing features of Rev. Rul. 80-282 are that the newsletter is distributed to relatively few persons, no attempt is made to target the publication of the newsletter toward particular areas where elections are being held, it doesn't name incumbents for re-election, includes all office holders, and makes no comparison with other candidates.

Here, the fundraising letters are not mailed to persons residing in the State where A seeks reelection to public office to the Senate. Nor is A aided by the fundraising letters in other respects. It is represented that the results of the survey contained in the fundraising letters received by T are not made known to A. Additionally, nothing in the fundraising letters suggest or encourages the reader to make a financial contribution to A for his campaign for office. Thus, under the circumstances, we believe there is likely to be little or no effect on the campaign by A due to T's fund raising solicitations. Accordingly, based on all the facts, we conclude that the distribution of T's fundraising letters signed by A does not constitute participation or intervention in a political campaign on behalf of A for political office.

The same law and rationale is equally applicable to B. The fund raising material will not be mailed to persons in B's congressional district. Further, the results of the survey will not be released to B under the circumstances.

Accordingly, we rule as follows:

1. T's use of Senator A's letter as a signatory on the fund raising letter signed by him, in the manner described above, does not constitute campaign intervention within the meaning of section 4955 of the Code.
2. T's use of Senator B as a signatory on the fund raising letter signed by him, in the manner described above, does not constitute campaign intervention within the meaning of section 4955 of the Code.

We express no opinion as to the tax consequences of the proposed transaction under any other section of the Code. The rationale of this letter will no longer apply if A and/or B become candidates for public office in a jurisdiction in which T is mailing the fund raising letters.

This letter does not address a situation in which a list of respondent's names is turned over to a candidate with or without consideration.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to I's authorized representatives. A copy of this letter should be kept in I's permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3