

§4800 IRS ISSUES

§4801.1 Policy The Diocese of Springfield in Illinois shall ordinarily follow IRS statutes and regulations, including those on income, unrelated business income, political and electoral activity.

Procedures

- A. As indicated above, the Diocese of Springfield in Illinois ordinarily follows IRS statutes and regulations unless it specifically decides to oppose them in litigation or lobbying or in some form of protest, a decision that will ordinarily be communicated to parishes, schools and agencies in a reasonably prompt manner.
- B. **Gifts to Employees.** Parishes, schools, and agencies should be careful to follow IRS regulations and rulings on gifts to employees in light of IRS Letter Ruling 200437030 (2004) which advises that gifts to employees with an easily discernible amount such as in a gift card or a check will be considered as income to employees even if the amount seems relatively minor such as \$50 or \$25. Gifts like a ham, a turkey, a fruit basket, nuts or candy for a holiday in an amount of approximately \$25 does not seem to trigger a taxable event. If the amount is determined taxable to the employee, it may be treated as a bonus and incur a less beneficial tax rate. Parishes, schools or agencies that want to offer employees gifts other than those described in the sentence below should consult the letter ruling cited, seek legal advice, or both.
- C. **Bonuses.** Parishes, schools, and agencies that wish to pay employees a bonus should seek the advice of the Diocesan Office for Finances since this is a taxable event and the tax rate applied may be one that is higher than usually applied to an employee's earnings.
- D. **Lobbying and Political Activity.** The IRS has determined §501(c) (3) organizations are only to spend an insubstantial amount of funds on lobbying and they may not be involved in any elections at all. Some churches claim that this is a violation of the entity's First Amendment rights, and they are litigating the matter and may be successful. It is the position of the Diocese of Springfield in Illinois, consistent with the position of the Office of General Counsel of the U.S.C.C.B. that the IRS position should be followed. The USCCB Office of General Counsel does issue political activity guidelines periodically which are on the USCCB website under the Office of General Counsel; these guidelines are very detailed, offer many examples and should be consulted by parishes, schools, and agencies.

Lobbying involves contacting, or urging the public to contact, members of a legislative body for purposes of proposing, supporting, or opposing legislation. Legislation includes any action by Congress, by a state or local legislative body, or by the public in a referendum, initiative, constitutional amendment or similar procedure. The regulation addresses any level of government, Federal, state or local, even very

local government. The IRS has never defined “insubstantial.” Although courts have suggested a 5%-15% range, the IRS appears to favor the lower end of that scale. While it behooves parishes, schools, and agencies to be careful, they must also remember that they are engaged in many other activities besides lobbying.

Unlike the prohibition for lobbying, the prohibition on political or electoral activity is absolute. §501(c) (3) organizations may not participate in or intervene in (including publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. The prohibition applies to candidates for elected public office. Sometimes focusing on issues may not be protection where a candidate is a “one issue” candidate or the candidates are known for their stance on a particular issue (to say that a parish supports the candidate who favors _____ may in effect be saying the name of the candidate).

There are many ways that parishes, schools or agencies may become involved: links on a parish, school or agency website could create problems, as can hall rental to a candidate (then one might be obliged to allow a candidate’s opponent to rent the hall even though the other candidate supports views that the parish does not), a parish school or agency might be tempted to put support for a parish, school or agency member or employee running for a very local office and run afoul of this regulation (a parish got in trouble for a recommendation of support for a member of a library board). This is an area in which a parish, school, or agency must be careful and seek legal advice or consult the USCCB Office of General Counsel website.

The reason that parishes, schools and agencies must be careful in this area is that sanctions can be severe and may well result in the loss of the tax exempt status of that parish, school, or agency.

- E. ***Unrelated Business Income Tax (UBIT)***. Organizations which are exempt from federal income tax still may be subject to tax from any unrelated trade or business in which they are regularly engaged. The trade or business must be unrelated to the organization’s exempt purposes. The fact that the exempt organization uses the income for its exempt activities does not make the trade or business “related.” There are a number of exceptions including: volunteer exception – substantially all the work in a particular activity is performed by volunteers; the IRS considers “substantially all” as 85%; this exception like raffles, bingo and other parish, school or agency fundraisers, many of which do not come under this tax because they are not regularly carried on. Donated merchandise and low cost item exception – applies to sale of items received as a donation or gift; thus, thrift stores would not fall generate UBIT. Bingo and gambling activities exception – this exception applies to events where wagers are placed, winners determined and prizes are distributed in the presence of all persons placing wagers, so scratch off bingo cards, bingo machines and other forms of “walk-away” games do not fall under this exception. Nevertheless, the IRS has other applicable regulations on these activities such as withholding and reporting obligations. Royalties are also an exception as are rental of real property unless the parish, school or agencies provides services in connection with the rental, unless the services are

customary in the rental of space, e.g., light, heat, trash collection and cleaning of common areas. The foregoing is a brief summary of complex regulations and does not include all possible regulations.

Parishes, schools or agencies considering fund-raising activities should carefully investigate these matters and seek legal advice. A parish that regularly rents out its hall may want to consider whether it is running a party center. A parish that engages in sale of scrip or gift cards may want to shape its operation so it uses volunteers. Parishes, schools and agencies should remember that their unrelated activities may be perceived as competition by businesses who may complain to the IRS.