

March 27, 2014

Hon. John Koskinen
Commissioner, Internal Revenue Service
Internal Revenue Service
111 Constitution Avenue NW, Room 1519
Washington, DC 20224

Re: Judicial and Executive Branch Appointments under IRC § 527(f).

Dear Commissioner Koskinen:

I am writing to call your attention to an issue raised in the recent Notice of Proposed Rulemaking (“NPRM”), Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, concerning political campaign activity by social welfare organizations that requires your immediate attention and cannot wait for the lengthy review of public comments to be completed.

Specifically, the NPRM proposes to include within the definition of “candidate” for purposes of the regulations under IRC § 501(c)(4), individuals who are nominated for positions in the executive and judicial branches of federal, state or local government. 78 Fed. Reg. 71535, 71538. The Alliance for Justice opposes the Service’s proposal for a number of reasons. However, we are greatly concerned about the purported rationale in the NPRM for the Service’s proposal, which states that treating activities to influence executive and judicial appointments and nominations as outside the scope of social welfare activities under IRC § 501(c)(4) will not cause a problem because such activities are already included as exempt function activity under IRC § 527(f).

As set forth in detail in point III (F) of our comments submitted in response to the NPRM, this statement is flatly contradicted by IRS Ann. 88-114, 1988-37 I.R.B. 26, issued by the Service in response to G.C.M. 39694 (Jan, 22, 1988). In that Announcement, the Service announced that it was seeking comments on whether activities to influence judicial nominations should be included in the definition of exempt function activity under IRC § 527 and that any future decision on this question would be implemented prospectively only. To date, the Service has never announced a resolution of this question, until the oblique reference in the NPRM erroneously suggested otherwise.

In order to avoid confusion in the regulated community, the Service needs to issue an immediate clarification retracting its erroneous statement in the NPRM regarding the current meaning of IRC § 527(f). Otherwise, numerous IRC § 501(c)(3) and other tax exempt organizations that seek to influence executive and judicial branch nominations will be misled into believing that they are currently subject to tax on their expenditures for these activities. Because the statement in the NPRM addressed the current interpretation of exempt function activity, moreover, this clarification cannot wait for the Service to resolve the larger issues presented in the NPRM regarding the future application of IRC § 501(c)(4).

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nan Aron". The signature is fluid and cursive, with the first name "Nan" and the last name "Aron" clearly distinguishable.

Nan Aron

cc: Sunita Lough, Commissioner of Tax Exempt Government Entities Division
Tamera L. Ripperda, Director of Exempt Organizations
Amy F. Giuliano, Office of Associate Chief Counsel (Tax Exempt and Government
Entities)